



German-Southeast Asian Center of Excellence
for Public Policy and Good Governance
CPG

CPG Online Magazine

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Foreword

Dear Readers, Colleagues, and Friends,

welcome to the 6th issue of CPG's Online Magazine in 2015 with which we would like to give an overview about our public activities and events in September and October. Highlights have been our 4th Winter School on "Human Rights" and the 6th Annual International Conference on "Law and Ideology".

CPG's events of the recent two months not only gathered fascinating contributions by scholars and practitioners from all around the world but also reflected the great support we receive for our work from the four universities forming CPG as a joint institute – the universities of Frankfurt, Münster and Passau in Germany and Thammasat University in Thailand. Moreover, our work is enabled by the constant support of a range of individual scholars and friends. The longstanding support by two of those friends has been celebrated in two ceremonies: a friendship award ceremony for Prof. Dr. Peter Gilles in September and a welcoming ceremony for Hon. Slavica Banic, Justice of the Constitutional Court of the Republic of Croatia as our latest senior research fellow in October.

Besides information on these and other recent events, we are also happy to include in this issue some articles and statements on a number of timely topics related to our work in various respects, namely:

- the 25th anniversary of the German Re-Unification (Prof. Andreas Rödder, University of Mainz as well as Gregor Gysi, Member of the German Parliament),
- German Chancellor Merkel's foreign policy pertaining to Asia (Prof. Klaus Larres, University of North Carolina, Chapel Hill),

- the struggle for political ordering in Nepal (Prof. S.D. Muni, Jawaharlal Nehru University, New Delhi),
- the recent election in Singapore (Prof. Michael Barr, Flinders University), and
- the project of the International Standard Organization (ISO) on a new standard for anti-bribery management systems (Prof. Bartosz Makowicz, European-University Viadrina Frankfurt/Oder).

Furthermore, two interviews, one with Veerawit Tianchainan, Director of the Thai Committee for Refugees Foundation, and another one with Dr. Sirilaksana Khoman, Chair of the Economic Sector Corruption Prevention of the National Anti-Corruption Commission of Thailand, offer some insights into the current situation of refugees and the fight against corruption in Thailand respectively. For the latter topic we also provide a collection of experts' comments on the recently enacted amendment of Thailand's anti-corruption law (a translated version was enclosed in 5th issue of the CPG Online Magazine).

Finally, as usual, notifications of some events and job opportunities selected to our scope of activities round up the issue.

I extend my thanks to all who contributed to our work during the last two months and this 6th issue of the CPG Online Magazine and hope you enjoy reading!

With best regards,

Henning Glaser
 Director,
 German-Southeast Asian Center of Excellence
 for Public Policy and Good Governance (CPG),
 Faculty of Law, Thammasat University

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Impressum





CPG events

September-October 2015

Special Lecture

“Remedies Against Court Decisions in German Procedural Law”

Prof. em. Dr. Peter Gilles

21 September 2015, Faculty of Law, Thammasat University

On **21 September 2015**, CPG arranged a special lecture “Remedies Against Court Decisions in German Procedural Law” given *by Prof. em. Dr. Peter Gilles*, Faculty of Law, Frankfurt University. Prof. Gilles gave an overview over main types of remedies in German procedural. The lecture was followed a discussion among all participants.



Seminar

“Realizing Court Decisions – Current Issues and Challenges of Foreclosure in Comparative Perspectives”

25 September 2015

Faculty of Law, Thammasat University, Bangkok

On **25 September 2015**, CPG hosted the seminar “*Realizing Court Decisions – Current Issues and Challenges of Foreclosure in Comparative Perspectives*” at the Faculty of Law, Thammasat University.

The seminar was opened with the presentation of ***Prof. em.***

Dr. Peter Gilles, Faculty of Law, Frankfurt University. Prof. Gilles gave a general introduction

to the topic focusing on tendencies of privatization and particularly on the differences between private and public foreclosure in Germany. ***Hon. Sorawit Limparangsri***, Judge, Office of the President of the Supreme Court of Thailand, then presented on current issues surrounding foreclosure of mortgage in the draft of the new civil and commercial procedural code in Thailand. He





particularly addressed contentious questions regarding foreclosure into condominiums and foreclosure into securities, while concluding with some remarks on class action cases. He was followed by **Dr. Kullapat Jangkamolkulchai and Pakwan Chuensuwankul**, trade officer and legal officer, Department of Business Development, Ministry of Commerce, who gave presentations on foreclosure and the role of the receiver in the Thai Business Security Bill, providing a thorough overview of the current and coming legal framework, and addressing the purposes behind the new Thai Business Security Bill. Finally, **Rangsima Rattana**, Legal Execution Department, Ministry of Justice, presented the roles of the Legal Execution Department in the enforcement of security interest and related challenges. She particularly followed up on the Secured Transaction Bill and introduced the audience to plans for online bidding processes in the course of foreclosures. The presentations were followed by a debate that offered the audience the opportunity to raise additional questions.



Program excerpt

Presentations

Prof. Dr. Peter Gilles, Faculty of Law, Frankfurt University
“Private and Public Foreclosure in Germany”

Hon. Sorawit Limparangsri, Judge, Office of the President of the Supreme Court of Thailand

“Foreclosure of Mortgage in the Draft of the New Civil and Commercial Procedural Code in Thailand”

Dr. Kullapat Jangkamolkulchai, Trade Officer, **Pakwan Chuensuwankul**, Legal Officer, Department of Business Development, Ministry of Commerce of Thailand

“Enforcement of Security Interest and the Role of the Receiver in the Thai Secured Transaction Bill”

Rangsima Rattana, Legal Officer Professional Level, Legal Execution Department, Ministry of Justice of Thailand

“The Roles of the Legal Execution Department in Enforcement of Security Interest and Related Challenges”

Q & A and open forum discussion



Friendship Awarding Ceremony in honor of Prof. em. Dr. Peter Gilles
28 September 2015
Faculty of Law, Thammasat University



On 28 September 2015, ***Prof. em. Dr. Peter Gilles*** received the CPG Friendship Award for his constant support and contributions to the work of CPG. Following laudatory words delivered by CPG Director ***Henning Glaser*** and Assist. Prof. Dr. Kittisak Prokati, Member of the Supervisory of CPG, ***Dr. Warawit Kanithasen***,

CPG Senior Research Fellow, handed out a token of appreciation to Prof. Gilles.



Seminar

“Tackling Corruption – National and International Frameworks of Anti-Bribery Policies and Strategies in Comparative Perspectives”
6 October 2015
Faculty of Law, Thammasat University

On 6 October 2015, CPG hosted the seminar ***“Tackling Corruption – National and International Frameworks of Anti-Bribery Policies and Strategies in Comparative Perspectives”*** at the Faculty of Law, Thammasat University.

The seminar was opened by a welcoming address by ***Assoc. Prof. Narong Jaiharn***, Dean of the Faculty of Law, Thammasat University. The first presentation was given by ***Henning Glaser***, CPG Director, Faculty of Law, Thammasat University. He addressed the theory of corruption and outlined how the global



discourse about corruption developed over the course of the last decades. ***Dr. Juree Vichit-Vadakan***, Secretary-General, Transparency International Thailand, followed with an analysis of the fight against corruption in Thailand, particularly addressing current national policies as well as the involvement of civil society actors like Transparency International.



Prof. Dr. Bartosz Makowicz, Chair of Polish Public Law, European University Viadrina Frankfurt (Oder), then concluded the seminar with his presentation on a new norm on anti-bribery management systems of the International Standard Organization, demonstrating the step-by-step implementation according to this newly developed norm.



The presentations were followed by a Q & A session debate that offered the audience the opportunity to raise additional questions.



Program excerpt

Panel presentations

Henning Glaser, Director, German-Southeast Asian Center of Excellence for Public Policy and Good Governance (CPG), Faculty of Law, Thammasat University

“Emergence and Impacts of the Global Anti-Corruption Discourse”

Prof. Dr. Bartosz Makowicz, Chair of Polish Public Law, European University Viadrina Frankfurt (Oder)

“International Anti-Bribery Standards – Issues and Results of the Latest ISO Global Meeting on Standardization of Anti-Bribery Management Systems, Kuala Lumpur Sept./Oct. 2015”

Dr. Juree Vichit-Vadakan, Secretary-General, Transparency Thailand

“Anti-Bribery Policies and Strategies in Thailand – A Critical Assessment”

Q & A and open forum discussion

H.E. Maria del Carmen Moreno Raymundo, Spanish Ambassador to Thailand (2nd from left) in a talk with CPG Director Henning Glaser; left: Maria Salcedo Ortiz, Deputy Head of Mission of the Spanish Embassy in Bangkok

**CPG 4th Winter School on “Human Rights”
19-23 October 2015
Faculty of Law, Thammasat University**

On **19-23 October 2015** CPG hosted its **4th Winter School on “Human Rights”** at the Faculty of Law, Thammasat University. Throughout five days with 15 lectures and presentations, over 50 students from various countries, including Thailand, Indonesia, the Philippines and the United States, attended classes and discussion panels on fundamental questions and current issues of human rights in theory and practice.

A main aspect of the Winter School was the discussion on general principles of human rights. **Henning Glaser**, the Director of CPG, welcomed the participants and held the opening lecture on “Human Rights – Promise, Philosophy and Politics”, elaborating on the interwoven debate of human rights principles not



just on a legal, but also on a political and – not less significant – philosophical level. **Dr. Lasse Schuldt**, DAAD lecturer at the Faculty of Law at Thammasat University and CPG member, gave a presentation on the fundamental concepts of “Human Dignity and the Principle of Proportionality”. **Assoc. Prof. Dr. Gothom Arya** from the Institute for Human Rights and Peace Studies at Mahidol University elaborated on the relationship between “Human Rights and Peace”.



International frameworks of human rights and human rights protection as another main subject of the Winter School was covered by several lectures. **Prof. Dr. Niels**



Petersen from the Faculty of Law at Münster University contributed with two presentations on “The International Protection of the Rights to Life” and “Political Rights in International Human Rights Treaties”. **Prof. Dr. Robert Esser**, Director of the Research Center for Human Rights in



Criminal Proceedings at the Faculty of Law of Passau University focused on international criminal law in his lecture on “Arrest and Pre-Trial Detention – International Standards”.



Prof. Dr. Prasit Aekaputra, Dean of the Faculty of Law at Huachiew Chalermprakiet University, presented on “International Law and the Right to Development”.

Complementing the international level, human rights in national jurisdictions were introduced for Thailand, Indonesia,



China and Croatia. **Assist. Prof. Dr. Pokpong Srisanit** from the Faculty of Law at Thammasat University gave a presentation on “*Human Rights and Criminal Justice in Thailand*”.



Indonesia was covered by the presentations of **Drs. Supardi**, M.

Pd., Faculty of Law, University of

Jember, Indonesia, on “Human Rights in Indonesian Justice

Criminal System” and of **Dr. Dominikus Rato**, M. Si., from



the same faculty on “Human Rights and Ethnography in Indonesia”.



Kai Shing Wong from the Institute of Human Rights and Peace Studies at Mahidol University draw the attention of the audience to the current situation of “Human Rights in China”.

From a European perspective, **Judge Slavica Banic**, Justice at the Constitutional Court of the Republic of Croatia, explored in her paper the current legal framework and political challenges of the “Freedom of Assembly in Croatia”.

The academic program of Winter School was completed by contributions of practitioners from human rights organizations who provided first-hand impressions of their work and informed about opportunities and challenges their organizations are confronted with. **Emelynne Gil**, senior international legal adviser at the International Commission of Jurists (ICJ), presented general aspects of “Human Rights and International Organizations”.





Prof. Dr. Amara Pongsapich introduced to the work and performance of the National Human Rights Commission of Thailand which she is heading as Chairperson. A third contribution came from **Veerawit Tian-chainan**, Founder and Executive Director of the Thai Committee for Refugees Foundation. He shared his personal experiences in his presentation on “Human Rights in Action – The Work of Human Rights Defenders in Thailand” (see also his interview below).



An additional day trip to the historical site of Ayutthaya complemented the academic program. After completing the Winter School many the students took the opportunity to attend CPG 6th Annual International Conference on “Law and Ideology” (see report below).

Program excerpt: Speakers and Topics

Henning Glaser, Director, German-Southeast Asian Center of Excellence for Public Policy and Good Governance, Faculty of Law, Thammasat University

“Human Rights – Promise, Philosophy and Politics”

Prof. Dr. Prasit Aekaputra, Dean, Faculty of Law, Huachiew Chalermprakiet University

“Human Rights in Times of Armed Conflicts”

Kai Shing Wong, Institute of Human Rights and Peace Studies, Mahidol University

“Human Rights in China”



Assoc. Prof. Dr. Gothom Arya, Institute for Human Rights and Peace Studies, Mahidol University

“Human Rights and Peace”

Assist. Prof. Dr. Pokpong Srisanit, Faculty of Law, Thammasat University

“Human Rights and Criminal Justice in Thailand”

Dr. Lasse Schuldt, Faculty of Law, Thammasat University

“Human Dignity and the Principle of Proportionality”



Hon. Slavica Banic, Justice, Constitutional Court of the Republic of Croatia

“Freedom of Assembly in Croatia”

Prof. Dr. Robert Esser, Director, Research Center for Human Rights in Criminal Proceedings, Faculty of Law, Passau University

“Arrest and PreTrial Detention – International Standards”

Dr. Dominikus Rato, M.si, Faculty of Law, University of Jember

“Human Rights and Ethnography in Indonesia”

Drs. Supardi, M.Pd, Faculty of Law, University of Jember

“Human Rights in the Indonesian Justice Criminal System”



Prof. Dr. Niels Petersen, Faculty of Law, Münster University

“The International Protection of the Rights to Life” and

“Political Rights in International Human Rights Treaties”

Prof. Dr. Amara Pongsapich, Chairperson, National Human Rights Commission of Thailand

“NHRIs and International Human Rights Mechanisms”

Emerlynne Gil, International Commission of Jurists

“Human Rights and International Organizations”

Veerawit Tianchainan, Director, Thai Committee for Refugees Foundation

“Human Rights in Action – The Work of Human Rights Defenders in Thailand”





CPG 6th Annual International Conference
“Law and Ideology”
23-25 October 2015
Lebua at State Tower Bangkok

Under the title “*Law and Ideology*”, CPG’s 6th Annual International Conference was held from **23-25 October 2015** at Lebua at State Tower Hotel, Bangkok, Thailand. Theme of the conference was the interaction of law and ideology in the formation of social order. In this context, the term “ideology” was used to designate normative worldviews with fundamental shaping impact on social ordering, constitutional order and the legal system and was thus not used with any negative connotation but essentially neutrally. The conference assembled 14 presentations from speakers coming from eight countries (Germany, Australia, Croatia, Greece, India, the Netherlands, United Kingdom, United States of America) presenting on a variety of topics related to the conference’s theme.



The conference was opened on 23 October with a festive ceremony. The welcoming words were delivered by *Jan Blezinger*, Counsellor, Head of Press and Cultural Section of the German Embassy in Bangkok, *Assist. Prof. Dr. Prinya Thaewanarumitkul*, Vice-Rector of Thammasat University, and *Henning Glaser*,



Director of CPG. They were followed by the official welcoming ceremony for *Hon. Slavica Banic*, Judge of the Constitutional Court



of the Republic of Croatia, as new CPG Senior Research Fellow. *Dr. Warawit Kanithasen*, himself Senior CPG Research Fellow, gave a speech in her honor acknowledging her professional achievements as well as her various and rich contributions to CPG. *Hon. Jasna Omejec*, President of the Constitutional Court of the Republic of Croatia, who could not be present personally, warmly welcomed Hon.



Banic’s new position and congratulated her in a letter (see below) read out to the audience by Henning Glaser.



The first academic day on Saturday, 24 October, started with the presentation of **Prof. Dr. Alexandros Kioupkiolis**, Faculty of Law, Economic and Political Sciences, Aristotle University of Thessaloniki, on law and ideology in contemporary deliberative democracy, introducing the audience to the constitution of democracy in John Rawls' deliberative democracy and in Michael Hardt's and Antonio Negri's radical democracy of the multitude. **Prof. Dr. Saul Newman**, Department of Politics, Goldsmiths University of London, continued with his presentation on post-anarchism and critical legal theory in which he elucidated the notions of anarchism, post-anarchism, an-archy, and post-structuralism, concluding on the remark that anarchism could be most closely associated with justice. **Prof. Dr. Wojciech Sadurski**, The University of Sydney Law School, then presented on the relationship between liberalism and law and how to solve the dilemmas of pluralism and legitimacy, addressing the concepts of comprehensive and restrictive liberalism while juxtaposing the motives for legislation with



the effects of legislation. The morning session then concluded with the presentation of **Dr. Cormac Mac Amhlaigh**, Edinburgh Law School, The University of Edinburgh, on the public/private divide and the law, elaborating on the law's relationship to justice and the issue of judges' lacking legitimacy in imposing their ideological views in the application of law in particular cases.



The afternoon session was opened by the presentation of **Prof. Dr. Robert Esser**, Faculty of Law, Passau University, on the influence of politics and ideology on national criminal law,



addressing particularly the nature of criminal law as a steering parameter and steering matter.



He was followed by **Dr. Marija Bartl**, Faculty of Law, University of Amsterdam, who presented on the topic of “Ideology as Knowledge in European Private Law”, elucidating the dichotomy of politically communicated goals and goals outside the political sphere, while taking the European Union Online Internal Market as an example of an



ideology proposing an ever closer union and economic integration in all fields. **Dr. Heloise Weber**, School of Political Science & International Relations, the University of Queensland, Australia, completed the presentations of that day with her reflections on the politics of law and global development, addressing the 2015 Sustainable Development Goals and noting their alignment with commercial law as well as



an emphasis on market access.

The second conference day on Sunday, 25 October, was opened with the presentation of **Prof. Dr. Niels Petersen**, Faculty of Law, Münster University, on the role of ideology in the debate on the democratic deficit of the European Union, analyzing how the conservative critique of the integration process put forward notions of sovereignty and democratic legitimacy in pursuing its agenda. He was followed by **Dr. Michael Wilkinson**, Law Department, London School of Economics, who presented on ideology, austerity and authoritarian liberalism in the crisis of the European Union, addressing the questions whether economic liberalism is authoritarian and particularly



elaborating on a process of de-constitutionalization consisting of de-democratization and a threat of de-legalization. **Hon. Slavic Banic**, Judge of the Constitutional Court of the Republic of Croatia, then continued with her presentation on ideology and law in Croatian constitutional jurisprudence, analyzing the legacy of socialist and communist ideology, war and post-war legislation on Croatian constitutionalism, and



concluding on the critical notion that constitutional court decisions are still often perceived as obstacles to the political process. The next presentation was delivered by **Dr. Stephen Skinner**, Law School, University of Exeter, on ideology and criminal law under fascism and democracy, addressing Italy's and Great Britain's usage of criminal law as a tool of repression in the interwar period, while focusing on the analysis of connections and similarities regarding punishment and political offenses. **Prof. Dr. He Li**, Department of Political Science, Merrimack College, USA, concluded the morning session with his remarks on the battle of ideas and its impacts on the rule of law in China, elaborating on the ideological underpinnings of China's development of the rule of law driven by an emphasis on good governance instead of electoral democracy.



The afternoon session comprised two presentations. **Prof. Dr. Bidyut Chakrabarty**, Department of Political Science, University of Delhi, addressed the phenomenon of left radicalism in India as a voice against a neoliberal capitalist order, particularly focusing on India's regional imbalances and their correlation to neoliberal extremism. Finally, **Dr. Jonathan Liljeblad**, School of Law, New England University, presented Myanmar's 2008 constitution as a hybrid of multiple ideologies, carving out a non-linear legal development with influences from common law, socialist law, customary law, and civil law which are reflected in the 2008 constitution.



Prof. Dr. Ingwer Ebsen, Faculty of Law, Frankfurt University, then completed the conference with some concluding remarks.

Every panel was supported by moderators including **Dr. Nilubol Lertnuwat**, Faculty of Law, Thammasat University, **Virod Ali**, Faculty of Political Science, Thammasat University, **Assist. Prof. Dr. Kittisak Prokati**, Faculty of Law, Thammasat University, **Thitirat Thipsamritkul**, Faculty of Law, Thammasat University, **Prof. Dr. Ingwer Ebsen**, Faculty of Law, Frankfurt



University, and **Dr. Duc Quang Ly**, CPG, Faculty of Law, Thammasat University.

Program excerpt

Friday, 23 October 2015

Opening ceremony and official welcoming ceremony for **Hon. Slavica Banic**, Judge of the Constitutional Court of the Republic of Croatia, as new research fellow of CPG

Saturday/Sunday, 24/25 October 2015

Prof. Dr. Alexandros Kioupkiolis, Faculty of Law, Economic and Political Sciences, Aristotle University of Thessaloniki, Greece

“Law and Ideology in Contemporary Democratic Theory: The Constitution of Democracy in Rawls’ Deliberative Democracy and in Hardt and Negri’s Radical Democracy of the Multitude”

Prof. Dr. Saul Newman, Department of Politics, Goldsmiths University of London, United Kingdom

“Post-Anarchism and Critical Legal Theory”

Prof. Dr. Wojciech Sadurski, The University of Sydney Law School, Australia

“Liberalism and Law: ‘Solving’ the Dilemmas of Pluralism and Legitimacy”

Dr. Cormac Mac Amhlaigh, Edinburgh Law School, The University of Edinburgh, United Kingdom

“The Public/Private Divide and the Law: Archetype or Ideology?”

Prof. Dr. Robert Esser, Faculty of Law, Passau University

“Influence of Politics and Ideology on National Criminal Law – Criminal Law as a Steering Parameter and Steering Matter”

Dr. Marija Bartl, Faculty of Law, University of Amsterdam

“Ideology as Knowledge in European Private Law”

Dr. Heloise Weber, School of Political Science & International Relations, The University of Queensland, Australia

“Politics of Law and Global Development: A Critique of the Post-2015 Sustainable Development Goals Agenda?”

Prof. Dr. Niels Petersen, Faculty of Law, Münster University, Germany

“The Role of Ideology in the Debate on the Democratic Deficit of the European Union”

Dr. Michael Wilkinson, Law Department, London School of Economics, United Kingdom

“Ideology, Austerity and Authoritarian Liberalism in the Crisis of the European Union”

Hon. Slavica Banic, Justice, Constitutional Court of the Republic of Croatia, Croatia

“Ideology and Law in Croatian Constitutional Jurisprudence”

Dr. Stephen Skinner, Law School, University of Exeter, United Kingdom

“Ideology and Criminal Law under Fascism and Democracy: Histories and Legacies”

Prof. Dr. He Li, Department of Political Science, Merrimack University, USA

“Battle of Ideas and its Impacts on the Rule of Law in China”

Prof. Dr. Bidyut Chakrabarty, Department of Political Science, University of Delhi, India

“Left Radicalism in India: Articulating a Voice Against the Neoliberal Capitalist Order”

Dr. Jonathan Liljeblad, School of Law, New England University, Australia

“Myanmar’s 2008 Constitution as a Hybrid of Multiple Ideologies”



CPG 6th Annual International Conference
"Law and Ideology"





Laudatory speech in honor of Hon. Slavica Banic, Judge of the Constitutional Court of the Republic of Croatia, on the occasion of her official welcoming as new senior research fellow of CPG at the opening the 6th Annual International Conference “Law and Ideology”

Dr. Warawit Kanithasen, CPG Senior Research Fellow

Honorable *Slavica Banic*, Judge of the Constitutional
Court of the Republic of Croatia,

Mr. *Jan Blezinger*, Counsellor, Head of Press and Cultural Section of the Embassy of the
Federal Republic of Germany,

Asst. Professor *Prinya Taewanarumitkul*, Vice Rector of Thammasat University,

Director *Henning Glaser* of the German-Southeast Asian Center of Excellence for Public
Policy and Good Governance (CPG),

Professors and members of the Academic Circle,

Ladies and gentlemen,

We are gathered here today, we are assembled here this evening to welcome the Honorable *Slavica Banic*, Judge of the Constitutional Court of the Republic of Croatia as the newest member of senior research fellows of the German-Southeast Asian Center of Excellence for Public Policy and Good Governance, commonly known by its initials – CPG. Actually, Justice *Slavica Banic* needs no introduction. To those of you who have been frequent visitors to Thailand and attending of the workshops, seminars, lectures and international conferences, Judge *Banic* is a familiar face. As recently as a few days ago, she kindly delivered a lecture for the CPG Winter School students. Judge *Banic* will be on stage again the day after tomorrow to discuss with us on law and ideology from her country's perspective – Croatia. Despite the relatively young age of present-day Croatia as a modern state, the Croats as a nation have already settled down in that area as early as the 7th century onwards. Today, this beautiful touristic country along the Adriatic Sea in Eastern Europe has every reason to be proud of her historical and cultural heritage. Moreover, the present people of Croatia should consider themselves to be fortunate to be living in a modern democratic state where the law is being applied equally to all.

Your Honorable Justice *Banic*, with its 13 honorable judges, the Constitutional Court of the Republic of Croatia is both a living testimony as well as a pillar of democracy and the rule of law in your beloved country.

Not only is Hon. Slavica *Banic* Judge of the Constitutional Court of the Republic of Croatia, she also lectures at the Faculty of Law of the Zagreb University. She is also Secretary General of the Institute for Public Administration, Croatian Civil Association.

Among the various positions that Judge *Banic* has had in the past, I would like to single out one of them among the midst. In doing so, I must excuse myself for being perhaps unfair in my choice. But I found her duty as Administrator at the Zagreb Office of the International Rehabilitation Council Centre for Torture Victims to be most interesting.

Professor *Puay Ungphagorn*, former Rector of Thammasat University once remarked that freedom is a strange thing. One is not really aware of it, unless one is deprived of it or has a friend or relative who has been unjustly imprisoned. Needless to say that *Puay* was a strong supporter of democracy and human rights.

Today, we are gathered here to welcome Judge *Banic* as a new member of the group of Senior Research Fellows. The fact that there is no particular job description makes it both easy and difficult at the same time. Easy, because we do whatever and whenever we like. This is what seems to appear from the outside. Deep down, however, all of us have been guided by our own conscious and our past experiences. Since the inception of CPG six years ago, the number of senior research fellows has increased one by one. The same can be said about the workload of the CPG in general. I remember vividly, that there was one year where around a total of 40 or so workshops, seminars, lectures and international conferences were organised. Practically one academic event was held each week throughout that busy year. This is an enormous achievement if one takes its permanent skeleton staff into consideration! No wonder, CPG is said to be the best of its kind. Despite all this, we have to admit that much more needs to be done, much more needs to be improved.

Ladies and Gentlemen,

We are gathered here today, we are assembled here this evening to extend our warmest welcome to the Honorable Justice Slavica *Banic* as the newest member of the team of senior research fellows of CPG. Given her wisdom and rich experience, I am already certain that Judge *Banic* will continue contribute to the ideals of democracy, the rule of law and good governance, the very principles on which CPG and Thammasat University have been founded.

Note of Prof. Dr. Jasna Omejec, President of the Constitutional Court of the Republic of Croatia, on the occasion of the official welcoming of Judge Slavica Banic's as new senior research fellow of CPG

Dear colleagues, ladies and gentleman,

It would be a great pleasure for me to have been able to be here with you today. However, my presidential duties prevented me from traveling to Bangkok, so I kindly asked Mr. Glaser to read these few words to you.

I was very proud to hear that the CPG decided to embrace my dear colleague, fellow judge, Slavica Banic. to this fine institution as a senior research fellow. She will, I am certain, greatly contribute to the CPG's multilayered work. I am personally very happy because the new bridge has been built between not only two, but three countries, thereby enhancing even more the ties between Thailand, Germany and Croatia.

Esteemed colleagues, I wish you every success in your work and I send you lots of regards.

Professor Jasna Omejec

Seminar

Police Work and International Law

26 October 2015

Royal Thai Police Cadet Academy, Nakhon Pathom



On 26 October 2015, CPG in cooperation with the Hanns Seidel Foundation hosted a seminar on ***“Police Work and International Law”*** for more than 50 officers and cadets of the Royal Thai Police Cadet Academy. Guest speaker at this event was ***Prof. Dr. Robert Esser***, Director of the Research Center ‘Human Rights in Criminal Proceedings’, Faculty of Law, Passau University, who gave a presentation on the topic of “Arrest and Pre-Trial Detention – International Standards”. His lecture was followed by a Q & A session which the participants used to engage in an exchange of expertise and experience.



CPG Events

in November – December 2015

Movie Seminar
“The Life of Others”
in cooperation with Thai-German
Society, Faculty of Arts,
Chulalongkorn University, and
Konrad-Adenauer-Stiftung
6 November 2015
Faculty of Arts, Chulalongkorn
University

On the occasion of the 25th anniversary of the German Re-Unification the movie seminar is arranged to provide a forum to discuss and to share reflections on issues pertaining to the movie in particular and to the German Re-Unification in general.

Seminar
“Human Rights in ASEAN”
25 November 2015
Faculty of Law, Thammasat
University

The seminar addresses human rights and human rights protection from the regional perspective of the ASEAN. Keynote speaker of the seminar will be *Prof. Andreas Follesdal*, Director of the PluriCourts Center of Excellence at the University of Oslo.

International Conference
“Good Governance for and by
Regulators”
in cooperation Hanns Seidel
Foundation
30 November - 1 December 2015
Windsor Suites Hotel Bangkok

The conference deals with the implementation of good regulatory practices crucial for achieving various economic and political objectives among the growing ASEAN economies. It addresses two main issues: First, how can good governance inside regulatory agencies be guaranteed and when are regulatory decisions? Second, how to guarantee that only good regulatory decisions are taken which influence a regulated market in the most efficient way?

Fact Finding Workshop
“Human Rights Based Guidelines
for Enforcement Officers”
in cooperation with Hanns Seidel
Foundation
2-3 December 2015
CS Pattani Hotel, Pattani

The workshop provides a forum to exchange expertise and experiences among stakeholders involved in security strategies and policies in the crisis-ridden Southern border provinces of Thailand.

CPG Alumni Seminar “25 Years
German Re-Unification –
Reflections on Historical, Political
and Cultural Dimensions”
11 December 2015
Kwanchitr Bangkok

On the occasion of the 25th anniversary of the German Re-Unification the seminar invites to sharing reflections on various aspects of the.

International Conference
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Articles

Is German Unity history?

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The German revolution of 1989/90 was a special revolution. Instead of being radicalized like the French revolution of 1789, the peaceful revolution on the streets of the GDR transformed itself into a regulated process of accession to the Federal Republic. In its course, the aims were changing: Whereas gaining freedom had been the main goal in the autumn of 1989, achieving prosperity was becoming more and more important after the fall of the wall. However, these goals do not contradict each other. Rather, according to the “Western” model which prevailed with the end of East-Western confrontation, democracy and prosperity are inseparable. In the winter of 1989/90, a third goal was added: Stopping the mass exodus from the GDR. These three goals defined the agenda of the German revolution.

All of this happened at a breath-taking speed. It was one of those historic moments in which “the world's process rushes itself into a terrible rapidity”, as *Jakob Burckhardt* had written in the 19th century: “Developments that would usually take centuries seem to pass by in months and weeks like ephemeral phantoms and thereby seem to be settled.” However, in the course of the reunification process, the driving forces were changing, from the people’s movement in the GDR to the Federal Government in Bonn which, at the latest by the vote of the majority of Eastern Germans in the *Volkskammer* parliamentary elections of 18 March 1990, assumed the task of furthering the development.

The reunification was like a jump into the darkness, one of these huge and unforeseeable challenges of German 20th century history. In that situation, the Federal Government decided to entirely “republicanise” the GDR according to the West German model by rapidly and comprehensively introducing the Western institutions.

From an institutional point of view, an alternative that would have combined all three goals – democratization, prosperity, and stopping the mass exodus from the GDR – on a sustainable basis has never been developed,

neither during that time nor subsequently. One could even – if this term were not as unimaginative and stereotyped as it is – describe the reunification in its form of 1990 as being “without alternative”. At the same time, the reunification was fundamentally misapprehended in two perspectives: in an economic and in a cultural perspective.

I.

Carried by the boom of the Federal Republic in the late 1980s and guided by forty years of “success story” and the “German model”, the Western perception was characterized by the conviction that the “Marxist-Leninist tree needed to be chopped down” (as the German newspaper *Handelsblatt* once wrote), leaving only the *Ampelmännchen* (the little man on pedestrian traffic lights) or the green arrow traffic lights as the GDR’s legacy. According to this belief, adopting the West German order would instead ignite an economic miracle comparable to the one that the Federal Republic witnessed in the 1950s. In a short amount of time “flourishing landscapes” (*blühende Landschaften*) would emerge, the former GDR would merge into the Federal Republic, and the East Germans would turn to become satisfied citizens of the Federal Republic.

Besides the fact that this perception overestimated the “success story” of the Federal Republic and underestimated the problems at hand, it was, ironically, based on a Marxist mode of thought: the material existence would determine the conscience. Indeed, it is the task of a democratic government to provide for material existence rather than individual conscience. However, Western sensitivity for the reunification’s cultural dimension fell clearly short of its institutional regulations. When, on the eve of 3 October 1990, *Lothar de Maizière* said “Goodbye without tears” to the GDR but at the same time stated that the history of these forty years is “a part of our personal biography, a part of our grown self” which “for some would be hard to leave behind”, West German representatives did not show much of an understanding. In general, people between Flensburg, Saarbrücken, and Berchtesgaden were not quite aware of the scope of the adaption that was requested from East Germans.

In this regard, West-Eastern misunderstandings were deeply rooted within the reunification process. West German self-assurance reaffirming the conviction of being history’s victor and the unity’s shaper met an East German mixture between, on the one hand, a deep feeling of uncertainty and, on the

other hand, high expectations towards the Federal Republic. Already at an early stage, East Germans developed a feeling of being discriminated and under external control, of a lack of respect and of an offending devaluation of East German biographies by West German dominance. Though the long predominant and often bitter juxtaposition of (*Jammer*-) “*Ossis*” (lamenting “Ossis”) and (*Besser*-) “*Wessis*” (know-it-all “Wessis”) has disappeared from the public discourse, polls regularly identify persistent political-cultural and mental differences as well as an East German mentality of demarcation.

II.

The fact that the differences were more deeply rooted and lasting longer than expected is equally true for the cultural as well as economic dimension. By opting for an economic, monetary and social union, the Federal Government opted for a sudden transformation of the GDR scheduled for 1 July 1990 – with all consequences.

Well-filled shelves in stores and supermarkets signaled the end of the economy of scarcity. At the same time, the shock of the upward revaluation caused by the introduction of the new currency was one of the major reasons for the de-industrialization that started at the same time. The issue of determining the exchange rate between the Deutsche Mark (D-Mark) and the GDR Mark is a paradigmatic example for the constraints of the reunification process that, at many instances, “only left the choice between two bad solutions” (*Lothar de Maizière*). The introduction of the new currency – under the conversion scheme of 1:1 for wages and rents, 2:1 for financial assets and obligations above certain exemption limits, in sum at a conversion rate of 1.8:1 – prevented a politically unsustainable situation in which the purchasing power of East Germans would have lagged behind that of West Germans. At the same time, it produced an unexpectedly severe crash of the uncompetitive GDR economy.

Already in 1991, the unemployment rate soared to more than one million people. These numbers roughly corresponded to those of GDR fake employment and, therefore, were a consequence of the GDR economy’s lack of competitiveness under market conditions. However, from their initial experience onward, East Germans connected unemployment with market economy, not an economic miracle. Even when people did not encounter unemployment, they were often obliged to change their jobs or place of work,

something that was very uncommon during the GDR era. In 1993, only 29% of East Germans worked in the same workplace where they worked in November 1989. On top of everything, the eclipse of the workplace did not only mean an eclipse of employment but also an eclipse of the central place in society.

These experiences produced a “deep emotional distance between East Germans and market economy” that was reinforced through an institution that soon became the scapegoat of all reunification rigors: The *Treuhandanstalt* (Trust Agency). On 1 July 1990, the *Treuhandanstalt* became the owner of 7,894 *Volkseigenen Betrieben* (people-owned enterprises) employing four million people and covering an area that accounted for more than half of the GDR territory. Its task was the restructuring of ownership and it was the biggest program of this kind since the secularization in 1803 and the *Bodenreform* (ground form) in the Soviet-occupied zone after the Second World War. This time, however, the task was not about nationalization but about privatization for which there existed neither any historical precedent nor the necessary time to prepare it conceptually.

The *Treuhandanstalt*’s motto was: “Privatize quickly, restore resolutely, shut down gently.” However, soon things developed in a different way: The number of companies fit to survive was much smaller than initially thought. Expectations needed to be lowered constantly. The *Treuhandanstalt*’s field of action soon changed from a sellers’ market to a buyers’ market. When it closed its books in 1994, 3,718 (30.6%) of initially 12,162 companies that mostly developed out of former collective combines were shut down, 6,546 (53.8%) were privatized, 1,588 (13.1%) were handed back to the original owners, and 310 (2.6%) were transformed into communal companies. The new owners of the privatized companies mostly came from Western Germany. More than half of formerly 4 million jobs were lost.

The *Treuhandanstalt* became the paradigmatic icon of the GDR’s sellout and of the accusation that the West had destroyed viable structures in order to eliminate possible competitors. Especially before this background, one of the main research tasks should be a profound empirical revision of the *Treuhandanstalt*’s history. However, currently there are good arguments that the *Treuhandanstalt* itself and its activities were not the central problem, but rather it was its mission that could not be satisfactorily fulfilled within the general conditions. The “management of illusions” (Wolfgang Seibel) was reflected, for instance, in the initial expectation that the newly founded

Treuhandanstalt would be able to generate about 600 billion D-Mark and that this amount would be largely sufficient to finance the reunification process. In reality, it ended its activities with a deficit of 230 billion D-Mark. This discrepancy of 830 billion D-Mark – a huge amount of money even in the era of Euro rescue packages – demonstrates not only the economic dimensions of German unity but also 1990's great illusions.

Two years after the reunification, the new federal states (*Länder*) were “virtually de-industrialized” (*Karl-Heinz Paqué*). They contributed only 3.5% to Germany's overall industrial value creation. There was no basis for marketable services. The reasons for this may not so much be found in any institutional shortcomings of the reunification process, but rather in the structural problems within the GDR economy. In this regard, the worn-down capital stock was a lesser problem, one that could be solved by the “*Aufbau Ost*” (“building up the East”). A bigger problem was the second consequence of 40 years of socialistic planned economy: The lack of products that could be marketed on the world market, the lack of indigenous market knowledge, and the lack of innovative potential, especially with regard to the variety of world markets and the superior competitiveness of Western companies.

Allegedly transitory phenomena became permanent problems that demanded unexpected state interventions without producing the expected results. The process of reconstruction and convergence proceeded much more slowly, more tediously and more narrowly than expected. In 1995, the first phase of deindustrialization that was accompanied by massive investments into infrastructure, a booming expansion of the construction sector and high growth rates, ended with the eclipse of the construction boom and the burst of the real estate bubble that had come with it. The long second phase was characterized by a slower make-up process and – as can be seen especially in retrospect – a continuous process of reindustrialisation that came to an at least temporary halt during the world financial crisis since 2009.

III.

What should be the overall assessment after 25 years? In the new *Länder*, the production process, as far as it had not been decomposed, has been modernized. We witnessed a true reindustrialization that, in comparison to Western Germany, is characterized in two particular ways: first, companies in the new

Länder are mostly of a rather small size and, second, there are production sites of bigger companies. The new *Länder* continue to function as an extended workbench whereas the research and development departments together with the engineers and managers are situated in Western Germany. Therefore, the East's potential for innovation and its economic strength do still not reach the levels of Western German regions. For instance, the per capita rate of registered patents in the East amounts only to about 30% of that of Western Germany. In and around Dresden, Leipzig, Jena and Berlin, regional growth and innovation centers were able to develop. Overall, however, neither self-sustaining economic structures nor a self-sustaining tax basis have developed.

Regarding economic indicators, the East's productivity – depending on the calculation method – has reached about three quarters to four fifths of the Western level, and remains at that level. Except for the agricultural sector, a productivity gap between the old and the new *Länder* has remained. The Eastern German unit labour costs are still below the Western German level. Initially, unemployment was the most severe problem within the new *Länder*. In 2003, the unemployment rate even surpassed the 20% mark. Since 2005, it has dropped significantly (from 21% to 12% until 2012), like in the rest of Germany. However, it has constantly been almost twice as high as in Western Germany. At the same time, the Western *Länder* are now within a reachable distance: In August 2009, the Eastern *Land* of Thüringen noted down an unemployment rate that was lower than that in the Western *Land* of Bremen. Even though unemployment is still a major issue in the new *Länder*, it is not as dramatic as it was during the first two decades after the reunification anymore.

The East's standard of living has developed faster than its productivity. A “belated explosion of wages” (*Rainer Geißler*) reached mostly employed persons and retirees who particularly benefited from the fact that, in many married couples in the GDR, both husband and wife had pursued an occupation. From a statistical point of view (whereas the statistics reflect the differing social structure), the per capita income in the new *Länder* amounts to about 80% of that in the old *Länder*, with at the same time lower costs of living, especially regarding rents and real estate. With the narrowing of real incomes, the consume patterns have narrowed as well: The gap of equipment with cars, telephones, computers, and home and entertainment electronics was largely closed after one decade already. Even with regard to the losers of unity, i.e. the unemployed and parts of the socialistic elite, *Helmut Kohl's* prognosis that, in

the East, “no one will be worse off than before, rather, many will be better off” became true at least in the material perspective.

The reason for this was the social union that had been established together with the economic and monetary union on 1 July 1990 and that eased social hardships caused by the reunification process. At the same time, the social union produced unexpectedly high costs: It overburdened the social security systems and led to an increase of the state deficit that reached up to 1,500 billion Euro in 2008, a point starting from which the world financial crisis and the Euro debt crisis demanded amounts of an even higher dimension.

For one and a half decades, the notion of a “failed” unity gained ground before this background. It coincided with the perception of a German crisis, a “descent of a superstar” (*Gabor Steingart*). However, this perception has changed since the German economic ascent in 2005. The economic recovery, in conjunction with the demographic development, defused the problem of unemployment and eased the pressure on social security systems. At the same time, low interest rates rendered manageable the refinancing of the exploding state debts. However, the question remains how sustainable this easing of tensions will be: Low interest rates may be reversed in a short amount of time, and the demographic development, in the long term, does not only bring about easing effects.

Though future perspectives are notoriously uncertain, the historical comparison to other cases of severe financial overburdening in German history – for instance the financing of the First World War which led to hyperinflation, a loss of assets and a radicalization of society – still results in a rather positive assessment.

IV.

Generally, any judgment depends on the standard applied. This is not least true with regard to the assessment of the German unity. Compared to 1990’s expectations, the German unity fell behind exaggerated hopes. Compared to more realistic and reachable goals, it needs to be stated that the German unity stopped the acute mass exodus, even though the loss of more than one million particularly qualified workers between 1991 and 2007 (and the demographic consequences connected therewith) could not be prevented. At the same time, about 400,000 West Germans moved to the East. In political terms, a stable

democracy evolved that even managed to integrate the Party of Democratic Socialism (PDS) that had mutated to become the party of the unity's losers. The living conditions of the vast majority of people improved dramatically, whereas, despite a continuous process of reindustrialization, a self-sustaining economy not really emerged.

Compared to the situation in 1990, Germany witnessed a gigantic solidary reconstruction effort, a national lead of strength with an enormous allocation of resources and massive transfer payments, the overall volume of which is currently estimated at 2,000 billion Euro. The cities, the infrastructure, the supply, the labor productivity, and the social security of the East leaped forward enormously. At many places, though not everywhere, "flourishing landscapes" emerged. That is less than expected in 1990, but more than what could have been expected in full knowledge of the facts.

From an economic perspective, the new *Länder* have reached the level of an economically underdeveloped region within a highly productive industrial country. Again, the judgment depends on the standard applied: East Germany's performance is far ahead of all formerly post-soviet transformation states. Compared to the Czech Republic (which initially found itself in a comparable situation), East Germany's productivity amounts roughly to twice the Czech productivity and the gross wages are about three times as high. Moreover, the new *Länder* have escaped the fate of left-behind de-industrialized regions like in England and Wales, and they have not become a German Mezzogiorno. Regarding their relation to the West German *Länder*, we witnessed an approximation, but not an alignment. Small steps seem possible, whereas a full-scale convergence of living conditions moved into an unrealistic distance. Another question is, however, whether that can be a reasonable standard.

Overall, the differences between Eastern and Western Germany are bigger and more persistent than expected, a fact that is currently also reflected by the way resentment and violence against asylum seekers – or more generally, questions of ethnic diversity – are being dealt with. Whereas xenophobic behavior usually faces the civil society's vigorous rejection in the West, it is given a widely public expression in the new *Länder*. The dividing lines between old and new *Länder* have not disappeared. They are still visible from an economic, social and cultural perspective. However, they are overlapping with other problems and challenges: the influx of asylum seekers and the

management of immi-gration, the Euro crisis and European integration, or the return of military violence to Europe.

History does not close its books like a company that needs to declare its exact accounts. In this sense, the Germany unity is history. History that is still smoking (*Barbara Tuchman*), but yet: history.

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25 Years of German Unity

Gregor Gysi, Member of the German Bundestag for the party The Left (Die Linke)



The division of Germany was the result of the Nazi dictatorship and the Second World War that cost the lives of 50 million people. The Soviet Union alone witnessed the death of 27 million people. The extermination of European Jews cost the lives of 6 million people. A number of countries were destroyed, Germany too. In Germany, 6.3 million people had died.

The Allied powers punished Germany by reducing its territory and, finally, by dividing the country. West Germans and East Germans did not have any choice regarding the political system. In 1952, Stalin offered secret elections in both German states (Stalin Note). According to my opinion, the then Federal Chancellor Adenauer should have accepted the offer. However, the Cold War was already looming.

The most important result of German unity in 1990 was the fact that this unity precluded a war between the two German states. Had a third world war been started during the time of the Cold War, the war would have begun between the two German states – there was no doubt about that between the United States and the Soviet Union. In that case, the two German states would not have existed anymore.

The unity was realized also due to the courage of many East Germans. The advantages for Eastern Germany are obvious: The unity was a gain in freedom and democracy. Never again will there be a wall in Germany. We have a functioning economy, not an economy of scarcity. Finally, the East Germans had a freely convertible currency, the Deutsche Mark instead of the GDR Mark, or in other words, they finally had a currency that could be used worldwide.

Nevertheless, the assessment of advantages and disadvantages depends on the subjective perspective of each and everyone individually. For many, also for me personally, the German unity meant an enrichment. However, many lost their jobs. A 50-year old man who remained unemployed until retirement hardly felt any enrichment. Moreover, men and women have different perceptions. Men evaluate their personal importance according to their professional position and erroneously assume that a higher salary equates a higher personal

importance. Women give birth to new life and therefore have a different perspective from us men. But also women had to suffer losses, particularly with regard to facilities for children. Over and above, we humans have the tendency not to enjoy what we have but to regret what we do not have.

The reunification also deserves some critical remarks. In 1990, we proposed for the sake of economy that, starting from 1 July 1990, all GDR companies should have been entitled to the reimbursement of their wage costs by the state. One year after that they would have received 90 percent, another year later 80 percent. In other words: Degressive state subsidies for the duration of ten years. All companies would have had the chance to produce their goods in a better quality or develop new products and to advertise their products. Surely, a number of Eastern German companies would have gone into bankruptcy anyway, but not as many as actually did. Instead, the Treuhandanstalt (Trust Agency) was in charge of deciding: Sometimes seemingly to eliminate competitors, sometimes arbitrarily, sometimes reasonably.

After privatization had been finalized at the end of 1994, only 1.5 million of once 4.1 million jobs existed in those companies under the supervision of the Treuhandanstalt. The losses in the course of privatization administered by the Treuhandanstalt amounted to 200 billion Euro. According to recent findings, Eastern Germany's economy might eternally stay behind the economy of Western Germany. Only politics can develop effective steps to counter this trend.

There were two things that particularly disturbed me: A lack of respect for Eastern German biographies and ways of life as well as a lack of proper observation.

A lot of issues needed to be overcome, that is for sure. However, a number of ideas from the East could have been introduced in the united Germany, too. If one demands the equality of men and women, also in the professional sphere, then there must be enough day care centers (Kindertagesstätten) as well as afternoon classes at schools. As school holidays are longer than the parents' leave, there must be holiday games and recreational facilities for children. That was not bad and could have been adopted from the East. The same is true for polyclinics which we call medical centers (Ärztehäuser) nowadays.

In educational matters, the East excluded people on political grounds but not on social grounds. Especially art, culture and public transport was affordable for everybody. Today, the daughter of a woman depending on public welfare (Hartz IV) can never listen to Beethoven's 9th symphony in the original, but only on her computer. When the former Prime Minister of Baden-Württemberg, Lothar Späth, became the manager of a former GDR collective combine, he immediately closed the company's kindergarten because he considered that it created unnecessary costs. Later, he wanted to hire two highly qualified French couples for his company. Both of the couples had two kids and asked whether there was a kindergarten in the company. So he replied: Of course not. So they said: Then we will not come. After that, he reopened the kindergarten.

It is important to note that, had we adopted certain ideas from the East, it would have strengthened the confidence of East Germans. More importantly, the West Germans would have associated the reunification with an augmentation of their quality of life. That would have been much more positive than the current perception.

The overall assessment must nonetheless be positive. We managed to proceed well with the implementation of inner unity for the new generation. However, there are two issues that need to be rapidly addressed: The wages and pensions in East and West must be aligned. Equivalent lifelong achievements must be rewarded by equivalent pensions.

The text is based on the speech Dr. Gysi's held before the Bundestag on 2 October 2015. Original in German, translated by Dr. Lasse Schuldt, DAAD-Expert Lecturer, CPG, Faculty of Law, Thammasat University

Angela Merkel and China: Trade, the U.S., the South-China Sea, and the Continuation of ‘Ostpolitik’

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Only a short while ago German leader

Angela Merkel returned from her eighth visit as Chancellor to China. Having been in office since 2005 Merkel thus has visited China almost once a year. Chinese leaders have been equally frequent visitors to Berlin. *Merkel* was accompanied by an impressive number of German CEOs. More than 20 large and smaller German companies were represented in her entourage. During the Chancellor's visit 13 major economic agreements were signed to the tune of over 18 billion Euro, including an almost 13 billion Euro deal regarding China's purchase of 130 Airbus aircraft. An agreement to trade Yuan-dominated financial products was also entered into between the *Deutsche Boerse*, the Shanghai Stock Exchange and the China Financial Futures Exchange. The China Europe International Exchange (CEINIX) is headquartered in Frankfurt and commences trading on November 18, 2015. For the first time authorized renminbi trading will occur outside mainland China. It is a clear sign that Beijing is keen on becoming fully integrated into the global financial markets and interested in further enhancing economic relations with Germany. A deal between Volkswagen AG and China's ICBC-bank also indicated this as well as the decision to designate 2016 as the year of Chinese-German youth exchanges.¹

The statistics regarding trade and economic relations between Beijing and Berlin are impressive. With Germany being the world's third largest exporter as well as the globe's third largest importer, there are over 5200 German companies registered in China and 900 Chinese companies are operating in

¹ Johnny Erling, "China braucht Merkel mehr, als Merkel China," *Die Welt*, October 29, 2015: <http://www.welt.de/politik/ausland/article148210729/China-braucht-Merkel-mehr-als-Merkel-China.html>; Cerstin Gammelin, "Merkel kontert Camerons China-Offensive," *SZ*, October 29, 2015: <http://www.sueddeutsche.de/wirtschaft/kanzlerin-in-pekung-wie-merkel-camerons-china-offensive-kontert-1.2713552>; "Airbus zieht Milliarden-Auftrag an Land," *FAZ*, October 29, 2015: <http://www.faz.net/aktuell/wirtschaft/unternehmen/angela-merkel-vereinbart-engere-zusammenarbeit-mit-china-13882461.html>.

Germany.² China is Germany's fourth most important export market. Close to a third of all EU exports to China come from Germany. For China Germany is also a most important country. It is its third largest trading partner.³

At the political level Berlin and Beijing are also making great efforts. In 2014 a Sino-German Advisory Committee on the Economy was established and the year 2015 was designated as the Sino-German "Year of Innovation." Not least, since 2011 Germany has been the only country in the world with which the Chinese conduct institutionalized consultations at governmental level for extensive bilateral exchanges. Not even the U.S. enjoys this kind of special status.⁴ In October 2014 the entire Chinese cabinet accompanied Prime Minister *Li Keqiang* to Berlin and in effect for the first time a joint German-Chinese cabinet meeting took place.⁵

This intensifying relationship has led some commentators, including the *New York Times*, to refer to German-Chinese relations as an "emerging special relationship."⁶ And there is some truth in this assertion. For instance, Prime Minister *Li Keqiang* asked *Merkel* during her recent visit to accompany him on a trip to his home region, the Hefei province. After all, they were "old friends" he explained. No other foreign visitor has ever had this privilege.⁷

While Germany is undoubtedly China's most important European partner, Beijing, however, is not just focusing on Berlin. The country is making great efforts to improve relations with the EU as such and is also busy bolstering relations with other European countries, such as France and the UK. The Chinese President's visit to the UK in mid-November 2015 was characterized by London receiving him with great pomp and circumstance (he stayed in

² In 2014 China's world wide trade was 11.3 per cent and Germany's was 7.2 per cent (the U.S. stood at 10.6 per cent). Federal Ministry for Economic Affairs and Energy (ed.), Facts about German foreign trade in 2014: <https://www.bmw.de/English/Redaktion/Pdf/facts-about-german-foreign-trade-in-2013,property=pdf,bereich=bmw2012,sprache=en,rwb=true.pdf>.

³ Chris Bryant, "Germany's export machine braced for China slowdown," *Financial Times*, September 13, 2015: <http://www.ft.com/intl/cms/s/0/c7b9f71e-52f2-11e5-8642-453585f2cfd.html#axzz3qOfKZkam>.

⁴ See Gudrun Wacker, "Deutsche China-Politik: Doppelte Einbettung gebraucht," SWP, October 24, 2014: <http://www.swp-berlin.org/de/publikationen/kurz-gesagt/deutsche-china-politik-doppelte-einbettung-gebraucht.html>.

⁵ See <http://www.thelocal.de/20141010/merkel-welcomes-entire-china-cabinet-to-berlin>.

⁶ "Germany and China: Too Close for Some," *New York Times*, May 16, 2012: http://rendezvous.blogs.nytimes.com/2012/05/16/germany-and-china-a-special-relationship/?_r=0; also "Germany and China: A special relationship?," *Deutsche Welle*, July 4, 2014: <http://www.dw.com/en/germany-and-china-a-special-relationship/a-17759575>. But see above all Hans Kundnani and Jonas Parellao-Plesner, "Why the Emerging Special Relationship matters for Europe," Policy Brief, European Council on Foreign Relations (ECFR), May 2012): http://www.ecfr.eu/page/-/ECFR55_CHINA_GERMANY_BRIEF_AW.pdf.

⁷ *Neue Zürcher Zeitung*, October 29, 2015: <http://www.nzz.ch/international/deutschland-hat-nur-keine-queen-1.18637682>.

Buckingham Palace) and the signing of economic agreements of impressive 61 billion pound sterling. Chancellor *Merkel's* own visit to Beijing in November 2015 (that was closely followed by French President *Holland's* visit to China) remained well below this volume of deals. In view of China's huge market and still impressive economic growth (now realistically estimated to be anywhere between 6 and 7 per cent annually), Berlin and the other major European players are busy intensifying bilateral trade relations with Beijing. They thereby run the risk of becoming a victim of China's 'divide and trade strategy'.

Merkel did show some backbone during her visit instead of just meekly giving in to all Chinese requests. Chinese pressure to give German support to an EU-Chinese free trade agreement, no doubt to counterbalance the transatlantic trade agreement (TTIP) that is currently negotiated between the US and Europe, was not immediately endorsed by the Chancellor. First, she indicated, the envisaged investment agreement between the EU and China had to be signed as planned in 2016. In fact, Merkel was quite annoyed about British Prime Minister *Cameron's* quick endorsement of the Chinese request for such a free trade agreement.⁸ Cameron's decision to reduce visa requirement for Chinese citizens wishing to visit the UK without however asking for reciprocal treatment for Chinese visa requirements for British citizens was also viewed skeptically in Berlin. It was feared that it would set an ill-considered precedent for not asking Beijing to offer something in return for the concessions made.⁹ China's well-known preference for 'bilateralism' in its foreign policy toward the EU has not proven to be without success. Beijing's strategy to undermine the EU as a closely-knit economic and political bloc needs to be carefully watched.

But there is another, perhaps even more important issue that the Europeans ignore at their peril: the world's only superpower has become much less enamored with China during the last few years. In fact U.S. relations with China are becoming increasingly strained. In particular with a view to China's ambitions in S.E. Asia and the South China Sea, conservative news outlets in the U.S. are claiming that "China and the U.S. have started to view each other not as partners, competitors or rivals but as adversaries."¹⁰ While there is some evidence to support this assertion, this certainly is not how Berlin views its relationship with Beijing. German analyst *Sebastian Heilmann* recommends that

⁸ *Neue Zürcher Zeitung*, October 29, 2015.

⁹ *Ibid.*

¹⁰ Andrew Browne, "The China Rethink," *The Wall Street Journal*, June 13-14, 2015: <http://www.wsj.com/articles/can-china-be-contained-1434118534>.

both Germany and the EU “must avoid being dragged into the intensifying great power rivalries between China and the U.S. that imperil a core European interest: keeping the Asia Pacific as open as possible for European and multilateral engagement.”¹¹

This is good advice but how feasible is its implementation? And what actually is Chancellor *Merkel's* China strategy? Does the German government even have something approximating a comprehensive strategy for dealing with China?

Merkel's China Philosophy – the Continuation of ‘*Ostpolitik*’

Contrary to the American approach the *Merkel* government is keen on de-emphasizing confrontation and attempting to enhance cooperation with China. Not least it is her country's economic export vulnerability that is influencing her. And the Chinese are aware of their own vulnerability. In fact both countries have a mutual export dependency on each other. While the U.S. only exports 14 per cent of its GDP, China exports 23.8 per cent of its GDP (and as recent as 2007 it was as much as 38 per cent). German exports even consist of a staggering 45.7 per cent of the country's GDP. The “economic viability” of both nations, as *George Friedman* has pointed out, “depends largely on maintaining exports.”¹² They both have limited capabilities to increase their domestic consumption or to develop new export markets to take care of their production overcapacities. And full employment and, particular in the case of China, domestic social stability and order thus depend on the maintenance of a high level of exports. A quarter of Germany's total employment depends on exports, either directly or indirectly.¹³ The smooth running of the global economy, therefore, is essential for both China and Germany if they are to maintain their standards of living and political and social stability.

¹¹ Sebastian Heilmann, “Niche Diplomacy at Work,” *Berlin Policy Journal* (April, 27, 2015): <http://berlinpolicyjournal.com/niche-diplomacy-at-work/>.

¹² George Friedman, “The Similarities between Germany and China,” *Geopolitical Weekly*, October 21, 2014: <https://www.stratfor.com/weekly/similarities-between-germany-and-china>; see also Georg Erber, “German-Chinese Economic Relations – Opportunities and Risks for Germany,” *DIWEconomic Bulletin*, Vol.4/2 (February 14, 2014): https://www.diw.de/documents/publikationen/73/diw_01.c.437630.de/diw_econ_bull_2014-02-3.pdf.

¹³ See Federal Ministry for Economic Affairs and Energy (ed.), *Facts about German foreign trade in 2014*: <https://www.bmwi.de/English/Redaktion/Pdf/facts-about-german-foreign-trade-in-2013,property=pdf,bereich=bmwi2012,sprache=en,rwb=true.pdf>.

This presents both nations with a fairly precarious situation. The economic and social stability of their countries are largely out of their own control. They are highly dependent on the outside world. As most of Germany's exports (58 per cent) go to other EU countries, the Euro crisis for instance and the sharp decline of many EU countries' financial ability to import goods was a highly dangerous situation for Germany and to some extent also for China. The EU countries are important trading partners for Beijing. 16 per cent of all of China's exports go to the EU (of which 3.1 per cent go to Germany) while 17 per cent go to the U.S. With 6.6 per cent China is Germany's fourth largest export market after France (9 per cent), the U.S. (8.5 per cent) and the UK (7.5 per cent). The Netherlands follows with 6.4 per cent.¹⁴

It is therefore little wonder that Chancellor *Merkel* pursues a China policy that is free from political friction and tension as much as possible. This explains, for instance, why the German government supports a 'one China policy' that has no room for constructive separate relations with for instance Tibet or Taiwan. Human Rights have also taken a backseat ever since *Merkel* was badly burned by Beijing's strong reaction when she received the Dalai Lama in the Chancellery in 2007 (a similar experience was made by British Prime Minister David Cameron in 2012). It took great efforts by Foreign Minister *Steinmeier* and a secret letter in which he apparently described Tibet unambiguously as Chinese territory to appease Beijing and re-establish close economic and political relations.¹⁵

Berlin's policy toward China is thus characterized by a policy of economic realism, political accommodation and neglect of human rights. During German-Chinese meetings and summits the latter is mentioned only *en passant*. Still, during her recent visit *Merkel* seems to have referred to a number of human rights cases and asked her Chinese counterpart to re-consider the envisaged and globally much criticized law that would severely curtail the work of non-governmental organizations and political foundations in China. Many western activists, however, regard quiet diplomacy, as insufficient. After all, massive human rights abuses still routinely occur in China.¹⁶ During her visit

¹⁴ The figures refer to 2014. See Federal Ministry for Economic Affairs and Energy (ed.), Facts about German foreign trade in 2014 (see note 2 above). See also Germany Exports, 1950-2015: <http://tradingeconomics.com/germany/exports>.

¹⁵ Stefan Kornelius, *Angela Merkel: Die Kanzlerin und ihre Welt* (Hamburg: Hoffmann und Campe, 2013), pp.206-08.

¹⁶ "Merkel-Besuch in China: 'Stille Diplomatie reicht nicht'," interview with Sophie Richardson of *Human Rights Watch*, in *Der Spiegel*, October 29, 2015: <http://www.spiegel.de/politik/ausland/china-human-rights-watch-kritisiert-angela-merkel-a-1059898.html>.

Merkel also wondered respectfully if China could assume a mediation role to help resolve the vicious war in Syria and thus contribute to defuse the refugee crisis engulfing Europe. By contrast, Washington's is increasingly less prepared to accommodate China. Above all Washington is determined to maintain and re-enforce the role of the US as a Pacific power with responsibilities for important allies in East and Southeast Asia (such as Japan and Vietnam).

But *Merkel's* more accommodating approach to China cannot just be explained with the help of economic and export statistics. Instead to a significant extent the explanation for these differing approaches can be found in Germany and America's different foreign policy cultures as they developed during the Cold War and since then.¹⁷ In Germany the consensus view on the left and the political right is that a policy of rapprochement and economic and political cooperation was responsible for overcoming the East-West conflict. Already previously the rapprochement with France in the 1950s by means of deep economic cooperation in the context of the *Schuman* Plan provided important lessons regarding the value of engagement and the partial pooling of national sovereignties. By contrast in the U.S. a consensus regarding the benefits of an aggressive anti-communist policy as practiced by administrations from *Truman* to *Reagan* prevails. In particular the rearmament program of the early 1980s is given credit for having exhausted and bankrupted the Soviet Union, which eventually led to its disintegration. In the U.S. the policy of superpower détente of the 1970s is still a highly contentious issue.¹⁸

Since unification and in particular since the late 1990s Germany has developed new confidence in its nation state and the country's economic prowess. Not least for generational/demographic reasons, the legacy of the Nazi past is holding Germany much less back in assuming a leadership role in international affairs than was the case in the previous decades.¹⁹ Due to its economic strength and the relative economic weakness of its EU partners, Berlin has also clearly turned into the most influential and powerful EU member state (as could be seen in the Euro crisis, including the Greek crisis, and for different reasons in the present refugee crisis).²⁰

¹⁷ See Klaus Larres, "Mutual Incomprehension: German-American Value Gaps over Iraq and Beyond," *Washington Quarterly*, 26/2 (2003): https://muse.jhu.edu/journals/washington_quarterly/v026/26.2larres.html.

¹⁸ See the somewhat triumphalist account by John Lewis Gaddis, *The Cold War: A New History* (New York: Penguin, 2006).

¹⁹ Klaus Larres and Peter Eltvos, "How Adolf Hitler Haunts Angela Merkel," *Politico* magazine online (May 26, 2015): <http://www.politico.com/magazine/story/2015/05/angela-merkel-hitler-118287>.

²⁰ See Hans Kundnani, *The Paradox of German Power* (London: Hurst and Company), 2014.

Germany has become convinced that it has developed its own uniquely modern, fairly refined, and quite non-ideological and non-militaristic foreign policy approach. The country's policymakers believe that with this approach they are capable of managing some of the world's pressing issues in a much more sophisticated way than is feasible with America's 'rough and ready'-foreign policy strategy. Berlin's new post-Cold War foreign policy has two major characteristics:

1. Berlin strongly believes in a foreign policy of "change through rapprochement" as developed by *Willy Brandt's* adviser *Egon Bahr* in the 1960s and practiced by Brandt in the 1970s. This 'soft power' approach is characterized by the 'weaving together' of political, economic and cultural ties between antagonistic countries to bring about a gradual softening and ultimate resolution of the conflicts of the day. In the 1970s and 1980s this led to the gradual rise of an internal dissenting movement and a significant increase of the influence of Western values and economic practices in the former Soviet Union.²¹ Berlin clearly expects that in the long run present-day China and Russia will not be immune from the beneficial influence of economic, cultural and also deeper political engagement with the West.

2. As the world's third-largest exporter of goods, German foreign policy continues to emphasize the importance of economics and trade. *Ostpolitik's* "change through trade" is the role model.²² In its relations with China – but also regarding *Putin's* Russia – the *Merkel* government is convinced that this is the right strategy. That way, over time western values will penetrate both countries and change them fundamentally from beneath. This, it is obvious, requires a significant period of time; it can only succeed in the long run. Still, in Berlin such a patient long-term strategy is seen as greatly more desirable than embarking on a militaristic foreign policy as advocated by some in the U.S. Congress and within the administration itself. The neo-isolationist noises that at times come also out of the Congress are not regarded as a sound alternative either. After all, Germany, the country that relies like almost no other country on its exports to maintain its standard of living, needs to engage with the world. German foreign policy is intricately mixed up with the country's export policy,

²¹ See Peter Bender, *Die "Neue Ostpolitik" und ihre Folgen: vom Mauerbau bis zur Vereinigung*, 3rd ed. (Munich: dtv, 1995).

²² See Werner D. Lippert, *The Economic Diplomacy of Ostpolitik. The Origins of NATO's Energy Dilemma* (New York: Berghahn Books, 2011).

giving its economic elite a large informal influence over the country's foreign policy.²³

Germany, the EU, the US, and China's South-East Asia Policy

In international relations Germany and the EU are focused to a large extent, as analyst *Gudrun Wacker* writes, on making China adhere to international law and global rules as well as on persuading China to participate in tackling climate change.²⁴ A coherent EU strategy toward China is only noticeable due to its absence, she explains.²⁵ By contrast, the U.S. is much more concerned about China's new geo-strategic and increasingly global military ambitions, in particular in South-East Asia and in the South-China Sea. Apart from maintaining peace, stability and the unhindered economic access to the region, Germany and the EU have no particular stake in this vast area.²⁶ This is very different for the U.S. Washington has important allies in this part of the world (Japan, Indonesia, Vietnam, Philippines, Thailand) and has been the foremost protective power in Southeast Asia since World War II. It certainly intends to continue this role. President Obama's so-called "Asian pivot" indicated quite unambiguously the importance with which Washington views the region.²⁷

For China South-East Asia is its natural backyard, however. It even sees the islands in the South-China Sea as part of its sovereign territory. And, as *Eberhard Sandsteiner*, the head of the German think tank Deutsche Gesellschaft für Auswärtige Politik (DGAP) has expressed it, "sovereignty is and remains of supreme importance for Chinese foreign policy."²⁸ Furthermore being the dominating power in the South-China Sea for Beijing is part of its ambition to become a globally influential power, if not the world's leading power (a

²³ See Stephen Szabo, *Germany, Russia, and the Rise of Geo-Economics* (London: Bloomsbury, 2015), chapters 1 and 4.

²⁴ See Gudrun Wacker, "Deutsche China-Politik: Doppelte Einbettung gebraucht," SWP, October 24, 2014: <http://www.swp-berlin.org/de/publikationen/kurz-gesagt/deutsche-china-politik-doppelte-einbettung-gebraucht.html>.

²⁵ See Gudrun Wacker, "China und die EU. Keine Strategie, keine Partnerschaft," in Kai-Olaf Lang and Gudrun Wacker (eds), *Die EU im Beziehungsgefüge großer Staaten. Komplex, kooperativ, krisenhaft* (Berlin: SWP, 2013), pp.29-40: http://www.swp-berlin.org/fileadmin/contents/products/studien/2013_S25_ing_wkr.pdf.

²⁶ See Gerhard Will, *Tough Crossing: Europa und die Konflikte in der Südchinesischen See* (Berlin: SWP, 2014): http://www.swp-berlin.org/fileadmin/contents/products/studien/2014_S10_wll.pdf.

²⁷ Kurt Campbell and Brian Andrews, "Explaining the U.S. Pivot to Asia," Chatham House paper (London, January 2013): https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Americas/0813pp_pivottoasia.pdf.

²⁸ Eberhard Sandsteiner, "Weltmacht: China steigt so schnell nicht ab," *Die Zeit* online, September 16, 2015: <http://www.zeit.de/wirtschaft/2015-09/china-regierung-politik-xi-jinping>.

position it lost to the West almost 800 years ago).²⁹ Accepting the dominating presence of another outside power in its backyard is regarded as humiliating and unacceptable in Beijing. A serious conflict with the U.S. is almost inevitable. It only remains to be seen if this conflict can be contained and will be fought in the political and economic realms only or also by military means.³⁰

While the Europeans traditionally sympathize with the global strategic considerations of the U.S., regarding Asia this has never been an automatic policy. For instance, during the Vietnam War not a single European country supported the U.S. wholeheartedly; even the British refused to send troops to Indochina despite repeated American requests.³¹ At present within Germany and the EU there is a great deal of understanding for Washington's view of the conflict with China in the South-China Sea. Still, no clear position has been taken. Chinese overtures to Europe thus have not only an economic and trade dimension, they also have very much a political dimension (as could also be seen recently, as mentioned above, with regard to the Chinese request for the conclusion of a EU-China free trade agreement to undermine the effectiveness of any TTIP deal with the US).

The political dimension of Chinese-European relations clearly includes (at least from Beijing's point of view) the rivalry with Washington about South-East Asia and the South-China Sea. At some stage the EU and Germany will have to take sides. At least this is the expectation of both China and the U.S. Still, the EU has always been good at fudging important issues and avoiding clear positions in favor of working out compromise solutions based on multiple concessions to all sides concerned. The EU, including Germany, clearly has no interest in pursuing a geo-politically guided policy toward China.

Conclusion

It is trade and exports and political stability and cooperation with Beijing that are at the heart of Chancellor *Merkel's* China policy. It is not geopolitics. The core tenet of *Ostpolitik* consists of the build-up of good and constructive

²⁹ See Henry Kissinger, *On China* (New York: Penguin, 2011); Jonathan Fenby, *Will China Dominate the 21st Century?* (London: Wiley, 2014).

³⁰ This, however, is not the view of leading scholar Graham Allison who believes military conflict between the US and China can be avoided. See the video of his talk at UNC-Chapel Hill on April 20, 2015, "Destined for War? Can the U.S. and China Escape Thucydides' Trap?" <https://www.youtube.com/watch?v=7f0Ip81oMUo>.

³¹ See Eugenie M Blang, *Allies at Odds: America, Europe, and Vietnam, 1961-1968* (Rowman and Littlefield, 2011).

relations by ever-closer trade, political and cultural relations. Engaging the other country by means of small steps in these areas is meant to lead to ever more trusting, stable and reliable relations. Predictability, consistency and the gradual converging of both countries' political philosophies are the ultimate long-term objective. Imposing one's grand strategy on the other partner is not part of the game, in particular if one doesn't even have a grand strategic game plan. Instead the short- to middle term aim is peaceful cooperation based on mutual economic interests. Come to think of it, this may not be a bad strategy at all. Yet, as always, it still needs two to tango.

Nepal's Constitutional Conundrum

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The idea of a complete restructuring of the Nepali State to make it democratic, secular, federal and inclusive has been the outcome of Nepal's second "Peoples Movement (*Jan Andolan-II*)" of 2005-2006. The Maoists of Nepal who have been working on this agenda through their ten year old peoples' war, demanding an elected Constituent Assembly (CA) to write a peoples' constitution, found the process of 'revolutionary violence' unworkable in advancing this agenda and joined hands with the mainstream democratic parties to make the "Peoples Movement" a success. The demand of an elected CA was first raised in Nepal in 1951, but was not pursued seriously until the Maoists uprising.

The Process

The first popularly elected CA-I came into being in 2008. It had the numerical dominance of the Maoists. CA-I, even under the Maoist government, could not complete its responsibility of finalising a Constitution by 2012. The opposition combine in CA-I, led by the Nepali Congress (NC) and the Communist Party of Nepal-United Marxist Leninist (UML) would not let the Maoists write the constitution as the latter desired. The reasons were both ideological as well as political. Ideologically, the opposition parties did not endorse the Maoists agenda of restructuring, as they had only accepted it vaguely to fight their battles against Monarchy during the 2005-2006 Peoples Movement. Politically, they were not prepared to approve a Constitution in the Maoists dominated CA-I, fearing that Maoists would reap huge electoral benefits in a post-constitution political arrangement. Both the ideological and political factors polarised differences between the ruling Maoists and the NC-UML opposition in the areas of federal restructuring, form of government and the electoral system. In their differences with the Maoists, the opposition had quiet support of and encouragement from the international community in keeping the Maoists

deprived of the credit of getting their restructuring agenda endorsed by the popularly elected CA-I. There was also lack of strong determination on the part of the Maoists to push through the constitution by voting in CA-I, as by 2012, the Maoists had mellowed down through compromises and adjustments to remain in, and enjoy power. The Maoist Government was also restrained by Nepal's Supreme Court in extending the life of CA-I for completing the constitution.

Nepal's second Constituent Assembly (CA-II) was elected in November 2013, under the supervision of a non-party caretaker government. Political composition of CA-II was radically different from the first one; the NC emerged as the largest party with 196 seats in a House of 601, followed by the UML with 175 seats. The two together were very close to 2/3rd strength. The Maoist came poor third with 80 seats. Being the dominant parties, the NC and the UML, formed the coalition government and set out to frame the constitution. Political direction set by the ruling coalition for constitution making initially had two notable features. One, that the new government was not obliged to follow the Maoist agenda of inclusion and federalism. In their assessment, electoral defeat of the Maoists marked peoples' rejection of their agenda. Secondly, they did not feel bound by the principle of broad national consensus in constitution making laid down in the Interim Constitution of 2007. This was politically difficult as experienced during CA-I and required taking the Maoists on board. Conscious of their collective numerical strength in CA-II, the NC and the UML were prepared to adopt a majority constitution based on voting in CA-II. Also conscious of the failure of CA-I, they set a time line to complete the constitution writing by January 22, 2015.

These initial assumptions however, soon proved to be unworkable. Accordingly, the time set for completing the constitution had to be revised; the Maoists, as the third largest party, having considerable street power to delay and disrupt constitution making both within and outside the CA-II, had to be brought on the board for ensuring smooth 2/3 vote for the constitution; and the initial preferences of the NC and the UML for the basic contours of the constitution, particularly federalism and inclusion, had to be reformulated. The pressure for completing the constitution was suddenly piled up in view of massive earth quake suffered by Nepal in April-May 2015. The government's response to the challenge of rescue, relief and rehabilitation fell far short of the need and expectations. A faster pace of constitutional process was then seen as a

better option both to cushion and divert attention from the growing popular resentment on the front of quake destruction.

As a part of the revised strategy, the ruling NC-UML coalition decided to co-opt the Maoists and a Madhes based tribal (Tharu) group¹ by working out a post-constitutional power sharing arrangement.² In their view, co-opting Tharu group will make the constitutional deal more credible as they represented both the Madhes and the Tribal groups (*Janjatis*). Co-opting Maoists and the Tharus opened up the parameters of federalism and inclusiveness where adjustments with the demands of the marginalised sections became inevitable. The ruling leadership, however, planned to work adjustments in such a manner that the overall traditional dominance of the minority social groups (nearly 30% of the overall population) of the hill-upper caste, the *Bahun-Chettri* combine represented by them, was not seriously eroded. To move the constitution making through fast track, the draft constitutional document was completed in July 2015 and opened to the people through electoral constituencies for feedback. This brought in many proposals for revision in the draft and also led to protests by many dis-satisfied marginalised groups. But the ruling parties could not politically afford to delay or disrupt the constitutional process. Ignoring many of the demands for revision and protests, the draft constitution was rushed through CA-II and approved without much debate or discussion. In fact the last leg of the constitution, with nearly 200 and more of its provisions, were adopted in just one day through raising of hands. There was an overwhelming support of 507 members out of a total of 598, with more than sixty abstentions and more than twenty voting against. The constitution was formally promulgated on September 20, 2015.

The Provisions and the Consequences:

The new constitution of Nepal is the first truly peoples' constitution and is a hugely progressive document as compared to its six precedents, and many other constitutions in Asia. It enshrines the principles of republican democracy,

¹ Madhes region is identified with the persons of Indian origin residing in the southern flat lands (Terai) of Nepal. They include several caste and tribal groups, of which Tharus constitute a considerably large chunk, almost 30-35% of the Madhes population. Tharus are also one of the largest ethnic group of Nepal, accounting for 6.6% of the total population.

² These four groups, the three major parties and the Tharu leader Bijay Gachchadar, signed a 16 Point Agreement defining the broader contours of the new Constitution on its most of the sensitive and controversial aspects. For the text of these points see <http://www.npnewsportal.com/the-16-point-agreement-full-text/> (accessed on October 18, 2015).

federalism, inclusiveness, extensive fundamental rights and freedoms for citizens, and secularism. The constitution also incorporates the principle of “socialism based on democratic values” which may baffle many theoreticians of Maoism, Marxism, democracy and democratic socialism. The political system adopted is of parliamentary democracy, with separation of powers between Legislature, Executive and Judiciary. It adopts both direct and representation modes to ensure that women, untouchables (*Dalits*), tribal groups (*Janjatis*), Madhes and other minorities get representation in constitutional bodies and national institutions. Women have been guaranteed 33% representation in all such bodies. Special Commissions have been established to protect and promote the interests and rights of women and other marginalised and backward groups. The new parliament will have 275 seats of which 165 will be directly elected and 110 filled through proportional vote. The constitution prohibits people to contest from more than one constituencies and debar the defeated candidates from securing ministerial positions.

Despite these distinguishing and progressive features, as well as massive support in CA-II, the new Nepali constitution has been confronted with resentments and rejections from the marginalised groups. Women have resented the provision of citizenship where their children with foreign husbands are eligible only for ‘naturalized’, and not ‘by descent’, citizenship. Naturalized citizenship is discriminatory as such citizens cannot aspire for very high political and administrative positions in the state. The *Janjatis* and Madhes groups are upset with the inadequate representation in national/constitutional bodies and neglect of their identity. While the Nepali nation has been recognised as being multi-ethnic, the composition of the Nepali State does not fully reflect the multi-cultural character of the society.³ This is evident in the number of parliamentary seats assigned to the Madhes dominated Terai region (southern plains) which fall far short of Terai’s population strength. Of the 165 directly elected seats, Terai deserves to get nearly 87 seats in view its total population (Including both Madhes and other groups) being 51.7%. But the Terai has only 65 seats. Inadequacy of the Madhes and *Janjati* representation is also evident in the Upper House of Parliament (National Legislature), where unlike that of the *Dalits* (the untouchables), their minimum representation has not been specified as per their population strength. The demarcation of

³ This point has been strongly and clearly articulated by Krishna Hachhethu, “*Naya Sambidhan Ko Chirfar*” (Dissecting the New Constitution), *Kantipur* (Nepali Daily paper), Kathmandu, October 02, 2015.

provinces has also been done in a manner that according to Nepal's well known political and constitutional analyst *Krishna Hachhethu*, except for the province no.2, in all the six of the seven provinces, the upper hill castes have a clear domination.⁴ The Madhesis are also objecting to the exclusion of their traditionally dominated districts both from the eastern as well as the western Madhes provinces. They feel offended by the mind-set of hostility and indifference towards them by the hill leadership, as the latter never took the former into confidence on defining the parameters of the new constitution. On the whole, the large sections of Madhesis, *Janjatis*, and women do not feel ownership of the constitution. They have been protesting since even prior to the promulgation of the constitution. The Madhesis, have been boycotting the CA-II for weeks since the constitution was put to vote. It is important to note here that the initially co-opted Tharu leadership also got alienated from the constitution making at its last stage, as their aspirations of federalism and inclusiveness were ignored by the three major political parties, the NC, the UML and the Maoists.

The new constitution of Nepal has also been rejected by the monarchists, Hindu fundamentalists and the extremists break-away Maoist groups. The Maoists did not participate in the elections for the second CA and have been demanding round table consultations for constitution making. The Monarchists have been asking for the restoration of monarchy in Nepal. And the Hindu fundamentalists led by the Rastriya Prajatantra Party (RPP) of Kamal Thapa (which is fourth largest with 25 seats, in the CA-II) have been asking for removing the "secular" character of the Nepali state and making it a Hindu State. The new Constitution, to some extent has accommodated this concern by diluting the secular character⁵ and making cow as the national animal (Art.9.3) so as to assuage Hindu sentiments by prohibiting cow slaughter. As a result, Thapa's RPP has accepted the new constitution after affixing its dissent and have also joined the post-constitution ruling coalition.

The strongest of these protests have come from the Madhesis who have been agitating since August 2015, turning Nepal's entire Terai region unstable and violent. The government's use of force to break the agitation resulted into nearly 50 deaths by the time the constitution was promulgated. The international

⁴ Ibid.

⁵ The new Constitution at the last minute adopted through insertion a definition of 'secular' that says "protection of religion and culture being practices since ancient times (*sanatan* – in Nepali) and religious and cultural freedom" (Article 4.1). This definition tilts in favour of Hindu religion which has been the oldest religion of Nepal, while giving freedom of other faiths as well at the same time.

group, Human Rights Watch has come out with a report blaming the government of Nepal for “disproportionate” use of force.⁶ Since the promulgation of the new constitution, Madhes agitation has also disrupted supply of essential goods going from India to Nepal creating serious scarcity of petroleum, food stuff and medicines among other things. Kathmandu and the rest of Nepal is facing unprecedented hardships as a result, leading also to serious strains and misunderstanding in Nepal’s relations with India. India has been blamed for imposing an economic ‘blocked’ on Nepal, creating scarcity during Nepal’s biggest festival – *Dassain* – and interfering in Nepal’s domestic affairs to dictate terms of the new Constitution. Kathmandu has witnessed burning of Indian flag and effigies of Prime Minister *Narendra Modi*, and unexpected surge in anti-Indianism.

International and Indian Responses:

Nepal’s new Constitution has been generally endorsed and welcomed by the international community. Initially the US, like India urged upon the Nepalese leaders to have an “inclusive and flexible” constitution that enjoys “broadest possible support”. The United Nations also on that count was cold in its initial reactions to the new constitution, as it expressed concern for violence in the Terai. Subsequently however, both the US and the UN have endorsed the constitution. China and the European Union welcomed the Constitution more enthusiastically. The Chinese are happy that Nepal’s federalism is not specifically ethnic and identity based, and also that it has continued dominance of the hill-upper caste groups. Any Madhes domination in Nepali power structure will not be a preferable factor from the Chinese perspective. It is also a matter of satisfaction for China that the post-constitution power structure in Nepal is clearly led by the communist parties, the UML and the Maoists. The European Union is also happy that Nepal has not been declared a Hindu State and secularism, howsoever, feeble, continues to characterise the structure of the Himalayan State.

India is visibly upset with the way Nepali leadership has gone about making the new constitution. It has lent its support for the Madhes and their agitation. Since coming to power in April 2014, Prime Minister *Modi* has gone

⁶ “Like we Are Not Nepalis”: Protests and Police Crackdown in the Terai Region of Nepal”, By Human Rights Watch, October 16, 2015. <http://www.hrw.org/report/2015/10/16/we-are-not-nepali/protest-and-police-crackdown>. (Accessed on October 19, 2015).

out of his way to reinforce and upgrade relations with Nepal. During his two visits to Nepal in August and November, 2014, he repeatedly pleaded with all sections of the Nepali political class to have a truly inclusive constitution. He offered special package of assistance to help Nepal build its infrastructure and tried to bridge India's "delivery deficit" by reviving and expediting stalled Indian development projects in Nepal. He also invited important Nepali leaders like *Prachanda* of the Maoist and *Deuba* of the NC, to visit India for consultations to ensure that Madhesis were taken on board. As a last minute, but untimely effort, Modi sent his foreign secretary Dr. *S. Jaishankar* to Kathmandu as a special envoy to delay the promulgation of the constitution and accommodate Madhes demands. None of these, however, bore desired results.

Frustrated, India refused to welcome the new constitution and, in view of the disturbed conditions in Terai and agitation of Madhesis, slowed down flow of essential supplies from India, precipitating scarcity crisis in Nepal. While Nepal pleads for urgent normalisation of the goods traffic, India's contention is that disruption in the flow of goods is caused by the Madhes agitation which, being an internal matter of Nepal, should be sorted out first internally, before India can do anything to substantially change the situation. This message was conveyed also to Nepal's new government led by *K.P. Sharma Oli* of the UML, through Nepal's new Foreign Minister *Kamal Thapa* when the latter visited India in October (17-19), 2015.

Way Forward:

The persisting stalemate between the new Nepali government and the Madhes and other marginalised groups, as also between Nepal and India is not good for any of the players concerned. Unless the new Nepali leadership initiates a sincere and meaning full process for constitutional reconciliation with the agitating groups, neither new constitution will be smoothly implemented nor there be any stability within Nepal. Such reconciliation will also create conducive conditions for restoring normalcy in relations with India. The adventurous assertion in Nepal of anti-Indian nationalism, invented as a political tool during the bygone years of monarchy, or bragging about alternative supply routes through China or other countries are not viable and long term options to redefine geo-culturally structured and economically sustainable traditional relations with India.

Indian policy makers must realise that their diplomatic efforts have failed to influence Nepal's constitution making in a positive and creative manner. The failure has been on many counts. There were inconsistent levels of quiet diplomatic engagement with regard to the constitutional process. Such engagement varied from indifference to offensive assertion. There were multiple stakeholders, at the official and political levels carrying diverse and conflicting messages from New Delhi to Nepal. India could surely afford to respond softly to the adoption of constitution in Nepal. Constitution should have been welcomed publicly, as it was a historic exercise, howsoever imperfect, for a newly vibrant polity. While doing so, India could also register its reservations on the constitution. The obstructions in the supply of essential goods to Nepal, for whatever reasons, are hurting ordinary Nepalese, without making desirable impact on the government. India should have explored other means, if at all, to persuade Nepali leaders towards accommodating the marginalised groups. Two important takeaways for India from its faltered approach towards Nepal's constitution making are; (i) there is a new, youthful, aspirant and self-conscious Nepal that calls for a radical different approach and engagement if India has to preserve and promote its vital national interests and strategic space there; and (ii) failure to find an early and amicable way out of the Nepali situation will dent India's overall credibility and image in the entire neighbouring region vitiating its own aspirations of emerging as a major Asian and global player.

Singapore: Flight to Safety Trumps Performance Legitimacy

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On 11 September 2015, the people of Singapore gave the ruling People's Action Party (PAP) its strongest mandate ever. A 10% swing brought its share of the vote up to 70% and reduced the number of opposition MPs from 7 to 6. This is not the highest vote the PAP has ever received, nor is this the lowest number of opposition MPs ever in Parliament, but these outcomes set new benchmarks because they were achieved in the first election since independence in which every constituency was contested. They were also won in the age of the internet, Facebook and Twitter and when the opposition had already a string of electoral successors, capitalising on a string of government policy and administrative failures in the areas of housing, transport, immigration and many aspects of the cost of living. They were also achieved in the first election under the “new normal”, a paradigm established in the 2011 General Election, whereby the PAP cannot presume that it holds the moral, intellectual and electoral high ground, so that its leaders know that they have to win and retain supporters, much like politicians do in Western democracies.

The opposition was naturally disappointed with its showing and the PAP leaders were naturally pleased, but in the case of the Cabinet Ministers, there was a more telling reaction written in their faces, speeches and body language: they were amazed. Only two nights earlier, Prime Minister Lee *Hsien Loong* had addressed a PAP rally and by all conventional measures delivered one of his worst speeches ever. He was fumbling, flustered, defensive and pleading. He highlighted all the issues on which his government was vulnerable – “housing, transport, immigration and health care” – simply to plead for support on the rather weak basis that the government was working hard to fix them. To make it worse, there were many awkward silences where the small crowd listening was supposed to cheer or laugh, but were missing their cues. No one is going to convince me that he did not walk onto that platform in a state of near panic, and walked off thinking he was a loser.

But he wasn't a loser. Far from it. Clearly, something drastic had happened in the four years since the 2011 General Election, or possibly as recently as the week of the election campaign itself.

Learning politics

First I suggest that the PAP leadership used the four years since the last General Election to learn how to do politics. By this I mean that, recognising the reality and implications of the “new normal”, Cabinet set out to win back lost support, moderate and correct unpopular policies, deflect criticism, and be seen to be caring representatives who listen to the people. It initiated programmes of welfare-style handouts, and health care and housing reforms designed to target hitherto neglected segments of the constituency: the young unmarrieds, the aged and the poor. (Admittedly, some of these reforms were already in train in more modest ways before 2011.) Uncharacteristically, it also engaged in slick, expensive and very effective public relations campaigns to reach out to the beneficiaries of these campaigns so that they were fully aware of what was available – and who they had to thank for it.

The government also denigrated selected members of the opposition, took a series of steps to silence and frighten critics and brought the new media (internet blogs, etc.) more fully into the ambit of the government's regulation. All the while they worked through the Ministry of National Development to engage in a major campaign targeting opposition's managerial competence, based on the record of management of the only Town Council run by the opposition. They used the Town Council issue as a meme to suggest that an opposition victory (which was technically a possibility since all seats were contested) would bring Singapore crashing down.

Except perhaps for the heightened levels of direct repression, such measures are the very grist of ordinary political engagement in most functioning democracies, but until 2011 they were outside the experience of the current crop of Cabinet Ministers, most of whom come from privileged backgrounds and all of whom were parachuted into politics after being plucked from their chosen careers. They had not fought to get their positions and had little notion of how to relate to ordinary people, with whom most had enjoyed little understanding or natural empathy. Since the 1980s, PAP leaders had slipped into lazy habits when it came to winning elections: bullying opposition candidates (by libel and

other legal actions); harassing opposition parties and civil society organisations (by restricting and closely managing their capacity to organise and speak); managing the media and trying to manage the internet; bullying constituencies (by threatening to deprive them of housing upgrades); and manipulating electoral boundaries just a few weeks out from each election. The exercise of receiving feedback and finessing policies with an eye to responding to popular opinion was part of this mix, but it was not a high priority. Hence they were blindsided in 2011 when the opposition, even working under such repressive conditions, found itself able to build a base of popular support sufficient to propel them into Parliament in a serious way.

Popular Support

The second major factor in the PAP's victory is even more basic: that the overwhelming majority of Singaporeans – including, it seems, the internet generation – have accepted, and even welcomed the PAP as their security blanket. As much as they might grumble about the government, complain about their many failings and enjoy poking fun at them, even young, educated, and well-travelled Singaporeans could not endure the thought that Singapore might have to manage without the PAP and the managerial regime it represents. Perhaps the decisive moment was the final night of rallies when they saw Lee *Hsien Loong* on television or on the internet in a state of near-panic – with his personal vulnerabilities on display for all to see – but the message was probably firmed up long before this. Given this framework, the main task of the Government's political messaging was simply to provide a trigger to activate this fear.

If this analysis is sound, then the likelihood of fundamental political change in Singapore is bleak indeed because it means that into the foreseeable future, the quest for 70% of the electorate, securing a safe harbour is always going to emerge as more than concerns about 'performance legitimacy'. Singaporeans are now willing to accept an ordinary Singapore where the trains break down regularly, the government routinely makes mistakes and then apologises, and where the government deals with criticism by silencing the critics. Such shortcomings have always been present, but unlike in the past, they are now public, acknowledged ... and acceptable.

Toward a Standardized Approach of Tackling Corruption on Global Level

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I. Introduction

In the current globalized world national economies and markets are linked to each other to such an extent that they together form a common global market place. In this space new compliance risks emerge such as corruption resulting every year in an immense damage not only for the states but also for the market, society and the ordinary people. Fighting corruption has therefore become one of the biggest challenges for state authorities. Some of them concentrate on their national markets, some of them try to make their legal acts extraterritorially applicable, like the United Kingdom with the UK Bribery Act 2010 or the United States with the Foreign Corrupt Practices Act. Finally, in the act of desperation some of them introduce severe penalties like the death penalty for certain corruption offense as the Kingdom of Thailand recently did in the Amendment of the Organic Act on Anti-Corruption (No. 3) 2015.

Apart from the above mentioned national efforts international organizations have also been recently trying to make their contribution to the fight against global corruption. Several of them have therefore published guidelines or rules on combating corruption. Worth mentioning are especially the “ICC Rules on Combating Corruption”¹ published by the International Chamber of Commerce (ICC) or the “Anti-corruption instruments and the OECD guidelines for multinational enterprises”² published by the Organization for Economic Co-operation and Development (OECD). The weak point of these guidelines is, however, that they are not legally binding laws, and thus the acceptance and willingness across the business world is quite limited to particular organizations that have adopted them.

¹ See <http://www.iccwbo.org/Advocacy-Codes-and-Rules/Document-centre/2011/ICC-Rules-on-Combating-Corruption>.

² See <http://www.oecd.org/corporate/mne/2638728.pdf>.

However the globalized world needs global answers for its compliance risks. It is therefore obvious that also international organizations are contributing to the fight against corruption. One of the attempts to make the global business cleaner from corrupted practices started in 2013 when the British Standards Institute (BSI) made a proposal and initiated the proceedings to the International Organization for Standardization (ISO) to draft and publish the new standard ISO 37001 anti-bribery systems. It is the purpose of this article to give an overview over the status quo of the proceedings (2) and their applicability and characteristics (3) as well as to explore some key ideas on the implementation of an anti-bribery system proposed by the ISO (4). Some final remarks including the impact the proceedings can have on the ASEAN countries (5) and a résumé (6) will complete this paper.

II. Drafting Global Standards

1. General Remarks

The most recognizable international standards are those published by the ISO. The ISO is a global association of national standardization bodies which are members of the ISO. The German DIN³ (German Standards Institute) or the Thai Industrial Standards Institute (TISI) are only two members out of more than 150 members within ISO.

ISO standards can be distinguished between those of type A (stating requirements and well known as industrial standards) and those of type B (stating guidelines). Only the type A standards are eligible to be certified. On the other hand, regarding the matter regulated by a standard a distinction must be made between “industrial standards” and “management standards”.⁴

First it must be noticed that ISO standards are not legal acts. So, they are not legally binding but can be voluntarily adopted by the organizations. The fact that standards are developed by a private organization which the ISO is results in both advantages and disadvantages. Since standards are not legal acts there is a lack of democratic legitimation. On the other hand, the same fact can be perceived as an advantage: the development of the standards is free from

³ DIN stands for Deutsches Institut für Normung e.V., German Standards Institute.

⁴ The most famous management standard is the ISO 9000 (later known as ISO 9001) the quality management standard.

political influences which sometime can be destructive and make particular legal proposals ineffective.

The ISO standards are drafted neither by politicians nor by members of national parliaments but by the very experts on the matter that is to be covered by the standard. By this means the ISO has so far published approximately 20.000 standards (both industrial and management standards).

2. ISO Project Committees

The works on new standards are taking place in either technical committees (TC) or project committees (PC). These global working groups consist of the delegations of the national standardization bodies and meet several times per year to proceed with the standard drafting. The amount of the national bodies participating in the drafting works depends on the meaning of the new standard and interest in it in the particular member country. Usually any national body creates on the national level a so called mirroring committee which again consists of national experts on the particular topic. Depending on the interest any member body may restrain from working on the standard, it can switch into the observation status or active status where national bodies may comment on the standard and by that way contribute to the development of the standard.

3. Compliance Standards ISO 19600 and ISO 37001

ISO has currently two compliance system standards. The first of them was drafted by the ISO/PC 271. This project committee developed the “ISO 19600 Compliance Management Systems” in December 2014 and has been dissolved after having done its work. ISO 19600 is a generic standard of the type B (guidelines) constructed as an overarching management standard for compliance risks. It can be implemented by any organization due to its flexibility, proportionality and the rules of good governance.

The other compliance management standard is currently still under development on the agenda of the ISO/PC 278. The committee works on the development of the ISO 37001 anti-bribery management systems which that is the subject of this article.

4. Initiation of ISO 37001 Anti-bribery Management Systems

The proceedings to create the new anti-bribery standard have been initiated by the Great Britain in 2013. Since then five global meetings have taken place in London, Madrid, Miami, Paris and in September/October 2015 in Kuala Lumpur. Currently around 50 countries and 7 liaisons⁵ are involved in this process. According to the future agenda adopted during the last meeting in Malaysia the standard is supposed to be published by the end of 2016.

III. Key facts on ISO 37001

1. General Provisions

ISO 37001 is being developed as an anti-bribery management system standard aiming to help an organization establish, implement, maintain and improve the above mentioned anti-bribery systems. It is supposed to have a universal applicability to any organization. Regarding its requirements the standards includes several operational and structural methods that represent the globally recognized know-how on preventing organizations and its members from corrupted actions.

The Standard as a management system follows the new High Level Structure (HLS) that has been developed by ISO for all management standards.⁶ It is therefore not a stand-alone management system but should be integrated into existing management processes and controls. Finally, as a type A standard it is eligible to independent certification (for example made by independent auditors).

2. Applicability

One of the most important goals of global standardization is the simplification and unification of rules and regulations apart from the legislative bodies. The standard therefore aims to be universally applicable to different kinds of organizations. Due to its flexibility the standard can be adapted to a wide range

⁵ Usually member states are enabled to work on the standards, however the so called liaisons with relevant international organizations can be concluded to cooperate on the drafting works.

⁶ Recently also already existing management standards has been adjusted to the HLS. See for example the new ISO 9001 quality management of 2015.

of organizations, including large organizations, small and medium sized enterprises, public and private sector organizations, non-governmental organizations, regardless the country of operation.

3. Scope: Bribery

The scope of the Standard is quite clear and narrow. It is applicable to *bribery*. It was one of the most demanding challenges to find a common and harmonized definition of bribery during one of the initial meetings of the ISO/PC 278. Finally the committee decided, due to the great range of different national definitions originating from the national laws, not to define the bribery in the standard.

However the Standard provides guidance on what is meant by bribery to help users understand its intention and scope. According to its draft provisions the term “bribery” is used to *refer to the offering, promising, giving, accepting or soliciting of an undue advantage of any value (which could be financial or non-financial), directly or indirectly, and irrespective of location(s), as a minimum in violation of applicable law, as an inducement or reward for a person acting or refraining from acting in relation to the performance of that person’s duties.*⁷

IV. Implementation of Anti-bribery Systems

1. HLS, PDCA and RMS

First, as already mentioned, ISO 37001 being the new ISO Management Systems follow the High Level Structure. The crucial point and huge advantage is that HLS offers users of the standards an already well known and recognized environment. Once an organization has introduced any management system following the HLS – and most of them have implemented the ISO 9001 – the new standard will be a user-friendly guidance to integrate the other management system into the existing structures and procedures.

⁷ Definition from Sec. 1 ISO 37001.

Also in a methodological point of view ISO 37001 has been developed as a quality system. It follows a well-known improvement cycle invented already at the beginning of 20th century. It is the so called PDCA-cycle aiming to *plan* (P) the implementation of a measure, then to *do* it (D) which means to implement it. In the third step the effectiveness of the measure should be *checked* (C) and one has to *act* (A) which means to improve the action if there is any need for improvement. The cycle should be continued over and over at lower and lower cost, as it was stressed by its inventor.

Finally, again in its methodological point of view, the ISO 37001 is based on the risk approach. It means that any attempt of establishing or running an anti-bribery system should start with assessing the risks which would be in this context bribery risks. The Standard requires the effective assessment of the bribery risks and consequently to address the stated risks by appropriate measures on structural and procedural level.

2. Overview over the Implementation of ISO 37001

The very core of the Standard states the requirement for establishing, developing, maintaining and improving anti-bribery management systems. In its eight simple requirements the standard covers the modern approaches and good practice. Every requirement is, however, to be understood as a result of compromise since it is obvious that measures of fighting corruption on the level of an organization may vary from continent to continent and from country to country, sometimes even from organization to organization within the same country of origin.

The following steps cover the fundamental elements of a management system under the HLS and reflect also the compliance management systems under ISO 19600. The following structure shows the main steps of an anti-bribery system under the ISO 37001:⁸

⁸ Following steps originate from the planned requirements of the ISO 37001. Please notice that since the standard is still under development, its requirements may vary in the final version, the so called Final Draft International Standard (FDIS).



2.1 Context of the Organization

The starting point of establishing and running the system is gathering of information. The context of the organization is the absolute basis for any further action against corruption in the organization. The information that are to be determined are the compliance obligations and goals of the organization, the interest of its stakeholders, the scope of application of the system and finally, one of the most important measures within a compliance system, the assessment of anti-bribery risks.

2.2 Leadership and Assigning Responsibilities

The leadership plays the crucial role for a successful anti-bribery system. It must not only commit itself to the compliance and anti-bribery policy but also enable the effective anti-bribery system by providing adequate resources: both financial and personal.

Not only is the literal commitment necessary. The Standard requires an active commitment at all levels of management, wide and clear communication of the commitment, adequate resources allocated to the anti-bribery function and other.

It is not any more a wisdom that it is not the compliance officer or the anti-bribery function who is responsible for compliance or bribes in the organization. It is clear and also required by the Standard that the responsibility should be assigned at all levels in the personal hierarchy of the organization: the message that each person is responsible for anti-bribery in the organization must be clearly sent and repeated through the organization in order to build and support the anti-bribery awareness of employees.

Finally there is the so called anti-bribery function that is required by the Standard. By this term the Standard means a person or a group of persons who will be responsible for the anti-bribery management systems. Some of her or his tasks are conducting anti-bribery trainings, maintaining the systems, reporting, etc. However, it is finally to be stressed that the anti-bribery function is not responsible for bribery committed by other members of the organization.⁹

2.3 Anti-bribery Policy

After the context of the organization has been determined and at least the initial risk assessment has been conducted there is a substantial basis of crucial enabling to draft the anti-bribery policy. It contains the determinations regarding fundamentals of anti-bribery strategy and should be published as an accessible document, communicated easily and accurately in an easy-to-understand language (native). The anti-bribery policy should be continually improved. It is highly recommendable to integrate the anti-bribery policy in the overarching compliance policy which itself will be the part of the overall corporate strategy. By putting the anti-bribery policy on that level the perception of corruption issues among the members of the organization will increase.

2.4 Planning

In the next step the operational planning is to be undertaken. Once the organization knows its anti-bribery risks it is able to address them by implementing appropriate measures and adjusting existing structures. The actions should address the risks and opportunities. The operational plan contains

⁹ On the other hand this responsibility in the terms of liability may be regulated differently depending on the provisions in the national legislation.

anti-bribery objectives and planning to achieve them. It should foresee detailed provisions on who, where, how and what measures should be undertaken. A clear and adjusted plan will contribute to an effective and efficient system.

2.5 Support

The supporting actions are the core of the operational measures within the anti-bribery management system. It consists of a wide range of different methods that should be adjusted to the particular anti-bribery risks of the organization (as stated in the risk assessment). The top management should ensure that appropriate resources are provided to run an effective anti-bribery system. The Standard requires different supporting methods: anti-bribery employment procedures, awareness building and training, appropriate communication and finally documentation of the systems steps and systematical updates.

2.6 Operation: Anti-bribery Special Methods

Regardless the substantial supporting actions the Standard require several operational methods aiming to tackle corruption. It requires from the third party due diligence, anti-bribery controls and the usage of anti-bribery contract term. It furthermore contains particular rules on handling gifts and hospitalities or requires internal investigation in case of possible irregularities. To gain a better impression on the standard and its operations two of the mentioned methods are to be discussed more closely.

2.6.1 Handling Gifts and Hospitalities

The Standard contains particular methods pertaining to the question on how an organization may handle gifts and hospitalities. In any case transparency and documentation are crucial elements. An organization should adopt a policy that will be appropriate to its needs. It may be the necessity of approval in advance or different control mechanisms like total prohibition (zero tolerance policy) and permitting only a limited access regarding different key aspects like maximum value, frequency or timing.

2.6.2 Anti-bribery Contract Terms

Another good example for operational methods that can be adjusted to anti-bribery systems originate from the situation in which there is no organization that would be willing to be infected by compliance problems of its business partners. To assess such risk on the bribery area towards business associates with more than a low bribery risk it is recommendable to include provisions into the contract providing *expressis verbis* that bribery in the relation to the contract are prohibited and the right to terminate the contract in the event of bribery, including even, if necessary, audit rights.

2.7 Evaluation

The anti-bribery system recommended in ISO 37001 would not be complete and thus the system ineffective if it would not require continuous evaluation and improvement. It therefore requires particular monitoring and analysis methods and review of the system by the anti-bribery function, internal audit and the top management.

2.8 Continuous Improvement

Once non-conformity occurs particular steps must be undertaken to react. To clarify the case and address its consequences internal investigations should be conducted. The most important methods within the improvement stage are corrections (as a direct reaction to the non-compliance) and corrective actions (as a reaction toward the system if the bribery was caused by the failure in the system). Regarding the type of the non-compliance the whole system must be evaluated, which could result in reassessment of risks, redrafting the anti-bribery policy, etc. At latest at this stage it becomes obvious that the anti-bribery system proposed by ISO 37001 is a quality system based on the approach of continuous improvement.

V. Final remarks

1. Certification

There have been discussions in the ISO/PC 278 on the question if the Standard should be published as a type A or B. Putting it in other words: if it should state guidelines or requirements open to certification. Both have advantages and disadvantages. One of the advantages is that being certifiable the Standard could reach a higher level of unification of anti-bribery systems. On the other hand the same can result in an unnecessary economic burden for organizations since the certification process can create huge costs. There also is an obvious contradiction between the very ISO standards, when the overarching ISO 19600 has been published as a type B, while ISO 37001 is going to be type A. Finally, the bribery risk landscape all over the globe may and will vary from country to country and the measures to address them should be adjusted to the particular needs of the organization (to its particular risks). It is at least questionable if the Standard will be flexible to an extent which will enable to adjust itself to all cases.

2. Relation to ISO 19600

Highly controversial is also the relation between ISO 19600 and ISO 37001. Since the latter aims to tackle corruption risks – these kinds of risks are typical compliance risks –, the justified question arises what should be the scope left for ISO 19600. This standard has been designed to manage all compliance risks, including corruption risks, data protection risks, product liability risks, and other compliance risks. Publishing another standard on anti-bribery management ISO seems to act inconsistently. On the other hand, however, corruption is a very complicated and delicate phenomenon that would require detailed measures and operations. To this extent it may make sense to go with another standard.

Finally, since the ISO 37001 is following the HLS it could work in the practice in such a way that organizations would implement the ISO 19600 as a basis and integrate in it the special provisions of ISO 37001. The simpler and more transparent solution – especially a more user-friendly one – would have to

be drafted as an annex to the ISO 19600 on the particular and detailed applicability of this standard to the corruption risks.

3. Relation to other Anti-bribery Systems

Neither ISO 19600, which is covering not only corruption but all compliance risks, nor ISO 37001 are contradictory to other already existing anti-bribery guidelines or standards like those published by the OECD or ICC. Besides its ordinary members the ISO/PC 278 concluded several liaisons to international organizations such as the OECD in order to achieve conformity with the mentioned standards. The ISO 37001 is therefore not only compliant to those standards but even covers most elements recommended by those standards for an effective anti-bribery management system. Keeping in mind the high grade of visibility and global acknowledgment for ISO standards, the ISO 37001 could succeed as the global standard against corruption.

4. Small and Medium Sized Enterprises (SMEs)

Some troubles may finally occur regarding the SMEs. The Standard contains several requirements that could pose a high burden on such types of enterprises that do not have huge financial and personal resources for their management systems. For example the Standard requires a compliance function and a formal risk assessment. Those points are quite costly and especially the latter one could be substituted by other alternative methods of gathering of information. Having still a couple of global rounds and hundreds of comments to discuss it is desirable that the Standard will be made even more SME-friendly.

5. Possible Meaning for ASEAN

The situation in the ASEAN countries regarding corruption is dramatic. Just to give some examples: Most of these countries are ranked on the last positions in the Transparency International Corruption Perception Index.¹⁰ Excluding Singapore that has an excellent position number 7 in the list, the rest of the ASEAN countries closes the list: Cambodia on 156, Laos 145, Vietnam 119,

¹⁰ Source: www.transparency.org/cpi2014/results.

Indonesia 107, Philippines and Thailand on 85 and slightly better Malaysia on position 50.

It is therefore obvious that those countries, their economies and people are highly affected by corruption and the destroying consequences of it. It is also obvious that those countries, albeit with different intensity and different methods, are fighting against corruption with usually more and more severe fines and penalties like the recent introduction of death penalty in Thailand.

However, only enacting severe laws has already failed in many other countries in combating corruption. Repression is only one of several methods. Corruption is a highly complicated phenomenon deeply rooted in the socio-cultural structures of a given society. Education at a very early stage (young age) is therefore necessary to create awareness of non-corruption and a sustainable compliance culture.

Another successful measure can be seen in preventive structures in organizations from which corrupted practices may be conducted. Since the standards and guidance are, however, not legally binding the leaders of the organization must be encouraged by incentive measures of the state to implement particular anti-bribery systems. It may be done by enacting regulations that could provide lower sanctions or a waiver in case of proven and documented effective compliance management systems.¹¹ The national legislators unfortunately too often forget that their role is not only to penalize unlawful behavior but also to promote any effort on the micro level of the organizations to prevent such a behavior.

Finally, also another possible scenario could result in a quite positive consequence of the ISO 37001 for countries deeply affected by corruption: Since ISO 37001 is a standard eligible for certification – and such certificates could be common in countries in which there is a possibility of liability for corrupted practices of the business contractors –, these organizations may insist that their partners obtain the same certificate and offer them by that a certain safety and security. Since ISO standards are acknowledged and recognized all over the world it is quite possible that foreign companies by using their economic dominance force foreign partners to implement anti-bribery systems like those recommended in the ISO 37001.

¹¹ A similar regulation exists already in the UK Bribery Act and other national laws and is being currently discussed by the legislator in Germany.

VI. Résumé

The main purpose of the last meeting of ISO/PC 278 in Kuala Lumpur was to discuss the comments from the national bodies and to bring the standard to the next stage. The committee had a hard working week and a substantial progress to the Standard has been achieved. It was also not a coincidence that the meeting took place in Malaysia, one of the ASEAN countries. While the Standard is planned to be published by the end of 2016, the next comment round on the national level is running. At this stage it is the last call for other ASEAN countries to take part in the process of drafting the anti-bribery standard that could one day become the global standard against corruption.

Interviews

Interview with Veerawit Tianchainan, Director of the Thai Committee for Refugees Foundation

Not only Europe, but Southeast Asia is also facing growing numbers of refugees. Involved state agencies, international organizations and NGOs, are striving to find solutions for major legal, political and humanitarian challenges in the wake of the influx of refugees. Among those organizations is the Thai Committee for Refugees Foundation (TRC), an international non-governmental organization engaged in the field of the protection and promotion of human rights for refugees, asylum seekers, stateless and internally displaced persons in Thailand and Southeast Asia. In the interview below TRC Founder and Executive Director *Veerawit Tianchainan* shares his thoughts on the current refugee situation and policy reforms aiming to ease the conditions for refugees in Thailand and looks at regional developments in ASEAN and Europe.



Q: Khun Veerawit, ‘refugees’ are currently one of the hotly debated issues in many countries in Europe in the light of an unprecedented influx of refugees. For Germany, experts estimate a total number of 1.5 Mio. in 2015. What are the current numbers for Thailand?

The total number of refugees in Thailand now is above 130.000 from around 40 countries. Most of them are coming from Myanmar. Some of them have been staying here more than 20 years. They came to Thailand as early as the migration from Myanmar to Thailand had started in the 1980s and has continued all over the years until the present because they are facing human rights violations. On the other side, we have also seen for the past 7, 8 years, the resettlement programs running. So far, I think the number of resettled refugees to third countries amounts to 60.000 to 70.000. However, there are still many of them staying inside refugee camps.

Q: How do you assess the living conditions in the refugee camps?

The conditions in the camps are not favorable. The refugees are not allowed to leave the camp, they are not allowed to work, and earn any income.

Young refugees who are born inside the camp stay and study in schools inside the camp. The curriculum is run by NGOs and the refugees' communities. So, there are many problems associated with this long term staying inside the camp. The technical term used by the United Nations and international organizations is "refugee warehousing", in the sense of keeping the refugees in a warehouse, locking them up and trying to forget about their existence until a solution is found. But refugees are human beings, they are not goods or stuff that you just keep there. We could understand this policy, if the refugees would be staying temporarily for like 3 months, 6 months or 1 year. Maybe for such a period a stay in the camp would be Ok, but 30 years is not temporary any more. We have second generations and even third generations in the camps. So, how could we have let that happen in Thailand: an entire population of over 10.000 people has been kept in the camp for so long. This is the reason why we have been working together with the National Human Rights Commission of Thailand and other rights group to advocate a policy change in Thailand. In this regard, we eagerly observe the political situation in Myanmar and what will happen after the upcoming election in November. If the conflict with the ethnic groups will be solved, it might be good for the refugees to return and start a new life. But if the situation is still not conducive for resettlement, then we must have something to change the way we treat them in Thailand, especially because we also see that the situation in camps is deteriorating and getting worse because after 30 years, the major donor – the European Union – and other countries have become "donor-fatigue". After 30 years, they would like to shift their resources to something else. And in this particular situation, that means shifting the founding to Myanmar for the sake of the development in Myanmar. This has led to further limitations in terms of food, health care and education in the camps. For example, the food ration has been cut for a third time and is actually below WHO standard.

Q: Where do you see further challenges to the situation of refugees in Thailand?

Thailand is the regional aviation hub in Southeast Asia and many people would by a ticket as the last resort to flee human rights persecutions. Even though Thailand is not a signature state to UN Refugee Convention, they come to Bangkok as the Office United Nations High Commissioner for Refugees is based here in Bangkok where the refugees go to and seek asylum. The problem

is that Thailand does not have a law that would allow the refugees to seeking asylum, meaning that any refugee and any asylum seeker who arrives in Thailand with tourist visa by which they enter the country will become an illegal immigrant after 30 days, or maximum 90 days, when their tourist visa will expire. He or she could then be subjected to arrest, detention and deportation. However over the years, rights groups and UN agencies have been advocating with the Thai government not to deport refugees back to the countries of origins because that would violate of the principle of non-refoulement.

So, what happens is that, asylum seekers or refugees, if they arrested, they could be detained in the immigration detention center, indefinitely, because the government cannot deport them. And they cannot be able to settle to another country. So they end up being detained in detain for many years. We have cases of detentions for 11 years. The conditions of the detention are actually very bad, according to many human rights reports. The detention cells are very packed, hygiene and sanitations very poor, and adults and children stay together. There are actually many reports of UN committees criticizing Thailand on this particular issue of immigration detention and detention of children.

Q: Where do you see possibilities for the improvement of the situation of the refugees?

We have been working together with UN agencies and international organizations to advocate a change of the refugee policy in Thailand. The TCR has been advocating for long that the Thai government should introduce a domestic law pertaining to the issue of asylum. We think that, even though the Thai government may not want to accede to the UN Refugee Convention, we should have our own domestic law in order govern asylum here in this country. And given the fact that we somehow close one eye and allow asylum seekers to stay here, why don't we just make it official and then set up some timeframe which we propose to the Thai government as a timeframe for temporary asylum so that the Office of the UNHCR could use the time of the temporary asylum to determine whether that person is a refugee according to the Refugee Convention or not. And if they are eventually recognized as refugees, they could be resettled to a third country. By doing so Thailand would not have to be

afraid that the refugee asylum seeker would end up in Thailand for a really long time. And the refugee will not need to suffer by infinite fear that they could be arrested any time.

A further policy we proposed to the government is to allow refugees to work legally in Thailand. In a way we could adapt the migrant worker program which Thailand has agreed on with the Myanmar government on the basis of a MoU. According to this agreement Burmese migrants are granted a temporary passport and a work permit. So if we adopt this model with regards to the refugees, who cannot be resettled, give them legal status and allow them – similarly to migrant works – to work legally for two years with the possibility of an extension of two years, this will reduce the anxieties and also end the long term warehousing. At the same time it will benefit the Thai economy because there is now a demand for workers in Thailand, and the Thai population is not providing the required number of workers. We have proposed this policy to the government early this year and have received positive response from the concerned Ministries.

So, what we are advocating to the government is not actually from TCR alone. We have proposed the policy of a temporary asylum for refugees together with the National Human Rights Commission of Thailand and the Inter-Government Agency Working Group comprising representatives of the Ministry of Justice, Ministry of Social Development and Human Security, and the Immigration Bureau, as well as other stake holders. We proposed that the government could amend the Immigration Act of Thailand and add a few articles to the Act. We have had several rounds of discussions with the Ministry of Foreign Affairs and the National Security Council. It is now on the table, and we would like the government to take it seriously.

Q: Have there been any changes in Thailand's refugee policy under the military government?

In the very beginning following the coup the government was very strict on refugees. There were trials to deport refugees in the camp back to Burma. Urban refugees were arrested and detain and deported. However, after some months, that did not happen anymore. Rights groups have been in communication with the government on how we would be able to contribute to the policy of not deporting refugees or forced deportation. And the military

government also respected that. There haven't been any deportations from the camps to Burma. In terms of the treatment of refugees, however, it is getting stricter for refugees. In the past they could have found a way to leave the camp and do some irregular work outside the camps, but now the government is getting stricter, so it is more difficult for them to be able to find irregular works outside the camp. And even though the government did not put them in the trial or send them back, it pressures refugees that they would have to return Burma. So I think that is the general situation we have found. For the urban refugees, overall there is no dramatic change except the group of Uighurs from China. But that may not be linked to a policy of the government, but maybe to the intervention by the Chinese government.

So apart from these we see some improvement pertaining to the problem of children in detention. The police try not to arrest children and to allow bail in cases involving children.

So we see some positive development. But overall we have not seen as much improvement as we expected. Take the situation of the Rohingya. On the one hand, we have to give credit to the government for cracking down all those illegal camps and reduce those detained in those camps. However, after the rescue, the Rohingya are still in detention without any prospect of resolution.

This is another policy that we would like the government to reform. Because the situation now is that the Rohingya would like to move to Malaysia where they relatives of family member are staying. But the law of Thailand is so strict in the sense that they would have to go back to where they came from. So if they came from Myanmar, they will have to be deported back to Myanmar but not Malaysia. And because of that, obstacle, they cannot further go to Malaysia and they get stuck. So we are trying to discuss with the government and policy makers on how best it will be able to resolve the situation because it is not good to keep Rohingya detention indefinitely.

In general, I think that the Thai government tends to make decisions on the spot, to solve the immediate problem, but not to look at the problems from a long-term perspective: so if they are in detention, if they are in labor camps, just crack down the camp releasing them, rescue them, don't think longer what we are going do with them. And situation of Rohingya is not new, it has been ongoing for many years, but every time, we still respond only to the given the situation goes bad.

Q: Why is that so?

I think it is because of the attitude of the authorities on refugees and asylum seekers. The attitude is that they don't want these people to be in this country. And because of that, they will do anything to prevent refugees and asylum seekers to come to Thailand. And they only respond because the situation was so bad, that is why their solutions are only very short-term ones.

Q: So, it is about deterrence?

Yes, but it does not solve the problem and does not prevent people from coming to Thailand, because having the options of getting killed in their own country and suffering a difficult situation in Thailand, people will choose possible detention instead of getting killed. But, is that wise for the Thai government to treat them that way when we are calling ourselves a human rights-recognizing and -promoting country? That Thailand's candidacy for a seat in the UN Human Rights Council failed is because the international community has also looked very closely on how countries treat refugees.

Q: Leaving Thailand behind, how do you assess the ASEAN in dealing with refugees?

With regards to the question of a regional response to the refugee problem, the Rohingya is very good case study for the ASEAN, because the country of origin is a member state of ASEAN and the countries involved are Thailand, Malaysia, and Indonesia. India and Australia and even the Philippines were also involved in the discussion. The solution found in the context of the refugee crisis in summer this year is a short term solution with Malaysia and Indonesia providing shelter to the refugees for one year before repatriation or resettlement to a third country. Unfortunately, Thailand did not allow those boats to disembark in Thailand for domestic political reasons.

The ASEAN Human Rights Declaration contains the right to seek asylum. Seen in this light, the ASEAN as a group falls short of the standard that the member states have agreed upon by signing the ASEAN Human Rights Declaration. So the 'ASEAN refugee policy' is an ongoing process, and I think

the end of the monsoon season will see boats coming out again. It will become another big test for the ASEAN.

Q: And compared to Europe? How do you see the developments in Europe?

Europe is for us in Southeast Asia a very good case study on global refugee policies because whatever the European Union decides on this matter will set precedents for other countries. And we observe if the European Union will be able to put into action the standards of human rights and humanitarian treatment of refugees or if the European Union is just giving lip service. So we see that there is a lot ongoing discussion on practical solutions to respond to staggering numbers of refugees in Europe and also that the European governments are discussing about how they would be able to respond to the situation in the countries of origin and how it would be possible to stop refugees from fleeing their country. So I think, if the European Union and the international communities would be able to find mechanisms to address the issue in the short term, medium term and long term, that maybe something Asian countries would be able to learn from.

Thank you very much for the interview, Khun Veerawit.



*The interview was conducted by Dr. Duc Quang Ly, CPG Project Manager.
Pictures by Maria Achrait*

Interview with Dr. Sirilaksana Khoman, Senior Advisor, National Anti-Corruption Commission of Thailand

Despite improvements in the past years corruption remains a serious problem in Thailand reflected in the recently promulgated amendment to the Organic Act on Anti-Corruption (Organic Law on Anti-Corruption (No. 3) 2015, see the comments on this act below) as well as the recent decision of the Constitutional Drafting Committee to include in the new Charter a provision on a lifetime ban for politicians to be found corrupt. In the interview below *Dr. Sirilaksana Khoman*, Chair, Economic Sector Corruption Prevention, National Anti-Corruption Commission of Thailand, informs about the current situation of corruption in Thailand and possible levers and strategies to combat corruption in Thailand.



Q: How would you describe the present situation regarding corruption in Thailand? What are the most pressing issues that need to be addressed urgently? In which sector is corruption most virulent?

First of all, let me stress that what I am going to say is my personal opinion and not necessarily the view of the National Anti-Corruption Commission (NACC). I think regarding the present situation in Thailand, indicators that people are looking at, such as the Corruption Perception Index, show that there is a serious problem in Thailand. Our own survey of companies regarding bribery also shows that companies say they pay bribes up to 30%. And although the most recent survey indicates that the incidence of bribery has gone down somewhat, corruption remains a serious problem in Thailand.

What are the most pressing issues? Basically, there are three components of the anti-corruption fight: suppression, prevention and promotion. With regards to suppression the most demanding challenge we are facing is that we need to do more speedy investigation. We have to conclude cases in a timely manner, so that people who are committing the crime of corruption would be deterred because they know that the punishment would be meted out to them. That would show others that there are speedy consequences for being corrupt.

As for prevention, inception of projects with wide stakeholder engagement is the most pressing issue, together with the legal framework to allow greater participation. We need to mobilize civil society to engage in the anti-corruption fight, and there I see promising developments. The new procurement law that is currently being scrutinized by the Council of State has a provision for integrity pacts and independent observers of government projects. We also need to break down the oligopolistic and monopolistic elements in society and in markets. On the promotion side, we need to more vigorously promote ethical values, which is not necessarily the role of the NACC.

To answer the question about in which sector is corruption most virulent, it is more useful to look at the types of corruption rather than sectors. Corruption ranges from petty extortion to high-level complex capture of state budgets. Petty extortion or petty bribery has gone down in Thailand because of the reform in public administration. But I think the most important area that is most difficult to tackle involves projects that are approved by the cabinet. In times of emergencies, natural disasters, floods and tsunamis, etc., you need the cabinet to be able to move quickly and spend money for emergency and disaster relief. And so we have that provision in our public finance. But it seems that there are no checks and balances in the system. The cabinet can approve unlimited funds and there is no consolidated accounting of the funds used. Each ministry or agency is responsible for a small segment of the project. And so they have their own accounts, but there is no consolidated account of the whole project. Take for example the rice scheme. Five hundred billion Baht was approved by the cabinet. But when you ask how the money was spent, the Bank of Agriculture and Agricultural Cooperatives as an account on how much was paid to farmers, but not how much of the rice was sold, as that comes under the responsibility of the Ministry of Commerce in charge of warehousing and storing as well as disposal. There is no consolidated account of the whole scheme. Different agencies have different accounts and there is no consolidated account and no transparency on how the funds were used and dispersed. So I think, that is a very important area that needs reform. There have been proposals for some kind of parliamentary budget office. That may be an answer. But it involves setting up a new agency and depends on whether it would have the motivation and power to scrutinize the budget – the power of the purse. Traditionally in Western democracies, the parliament would scrutinize the government. But in Thailand this tradition was never built up. Once the

government is formed and Prime Minister more or less nominated, the parliament doesn't rigorously question how the money is spent. So people have been proposing a parliamentary budget office. Alternatively, in my opinion, we might think about converting the Budget Bureau into an autonomous institution. At the moment the Budget Bureau comes under the Ministry of Finance and the Minister of Finance is their boss. The Minister of Finance is part of the ruling government, and so the Budget Bureau has limited ability or motivation to question the budget because the officers of the Bureau can be transferred or intimidated.

Q: What are the actual strategies and measures in the fight against corruption and how are they implemented? What are the challenges and obstacles?

In my own opinion, if we can place more emphasis on prevention, it would be much more efficient than waiting for corruption to occur and then doing the investigation which is very time consuming and very difficult. The problem that we have right now is that there are so many cases that are backlogged. We still need to spend time on the investigation of the cases. That is a major constraint for shifting resources towards prevention. Because we cannot shift resources yet, I think it is really important to engage civil society and every stakeholder in society to come and be a partner on the prevention side.

Another major challenge in strengthening the prevention of corruption in Thailand is that social sanctions in Thai society are not strong if we can compare with societies like those in Korea and Japan. In these countries even just a small "scandal" of wrongdoing might result in resignations and sometimes suicide. Nothing needs to be proven. But in Thailand that doesn't happen. People don't resign from their positions as a rule. There has only been one case of someone resigning that is Khun Apirak Kosayodhin, the former Governor of Bangkok, when he was indicted on charges of corruption. He resigned so that the investigation could go ahead. To my knowledge that is the only case when someone voluntarily resigned. In Germany ministers who were accused and proven to have plagiarized their PhD theses resigned. There is no law that says that he or she has to resign, so no legal procedures are needed. But this kind of sense of civic responsibility has to be built up over decades. I am sure that these people don't really want to resign, but it is the social

pressure that makes them resign. This kind of social sanction is still not strong in Thailand. We have to rely on legal sanctions and so we get bogged down in legal wrangling.

In this regard we really need education and ethics as a long-term strategy to fight corruption in Thailand. However, education needs to be children-centered. At the moment we are preaching to them that, for example, stealing is wrong, and they know that it is wrong, in the abstract sense. It needs to be more personal. For example we could ask children: if you want a nice smart phone and your parents cannot afford it, but your father perhaps is in a position where he can extract bribes, would you feel that it is alright for your father to get these bribes in order to buy you a smart phone. Children need to be involved in discussions on something that is very relevant to them. I know this is a cliché but we need to build that up as a long-term strategy.

As a medium-term strategy for an effective prevention of corruption I think we need to achieve better project monitoring and better asset recovery. In project monitoring, a major challenge to tackle is identifying independent experts to monitor projects. Take the example of the Suvarnabhumi Airport Phase II project. It is very difficult to find independent experts that are not already involved in the project. International cooperation could be explored here, involving cooperation for example from the ASEAN member states. Asset recovery from foreign jurisdictions is also important, so that criminals who flee abroad will not be able to enjoy their ill-gotten gains.

Q: Have there been changes in the anti-corruption polices under the current government?

The current government has promulgated many new laws that expedite government service and transparency. There are three laws that have already been enacted and another 9 laws that are under consideration.

Q: Which role does corruption play in the view of electoral politics in Thailand?

Democracy is the least flawed system of government. But to have a full fledged democracy we also have to have checks and balances. I think the areas where anti-corruption plays a role related to electoral politics are election promises and budgetary transparency. Politicians have the right and freedom to make electoral promises and to undertake whatever policies they consider

suitable. But what I would like to see some reforms in this area. When politicians make promises during the election campaigns and offer projects they are going to implement after coming to power, I would like to see a law requiring them to display how much those projects will cost and where the money is coming from. There are only a few avenues and sources from which the money can come. First, from taxation. If you are going to increase taxes, then which taxes and by how much should be disclosed. Make that clear, explicit and transparent. If you don't increase taxes then you have to cut some other programs and projects. Which ones? Make it transparent and let the people know which programs are going to be involved, whether it is school funding, healthcare or whatever. If you don't increase taxes, or cut programs, then you have to borrow. Make clear the lending source, either domestic, international or whatever. So I think that, if the law requires politicians to do that, then the people can make informed judgments and vote accordingly.

Q: Which role does corruption play from the perspective of the economy and especially from the perspectives of the foreign companies?

In terms of the economy I think having a corruption free society is really important for sustainable growth and development. Some people would say that a little bit of corruption is good because it greases the wheel, it moves things along. But that is not the sustainable situation. It's like a short-run fix. If 'greasing of the wheel' is needed, why not concentrate on where the wheel is stuck, and fix that? In terms of the values in society, you don't want to teach your children it's alright to bribe those people in order to get the project. If children grow up thinking like that, what kind of society would you have? There are bound to be elements in society that would oppose that. So it would fuel conflict in society and that is not good for the economy either. So it is not sustainable if you have a society or an economy in which corruption is pervasive.

In terms of foreign companies, Thailand has now included foreign officials as targets of possible prosecutions and investigations in the recent amendment of the Organic Act on Anti-Corruption. Previously we exempted foreign officials from being investigated. Foreign companies often complain privately about having to pay bribes to government officials, they are reluctant to report it and don't want to get involved. Without evidence it is not possible to

proceed on hearsay, so we need cooperation from everyone, from all the stakeholders, including the foreign companies.

One question that we need to work out with respect to the amendment is the question of personal liability and whether the management personally has to be responsible for not overseeing the conduct of their employees. I think the foreign companies are very nervous. I had a phone call with the American Security Exchange Commission. I was asked about the death penalty, and whether the foreign companies – if caught in a bribery case with a Thai official – would be subjected to the death penalty? I had to inform them that for long time, no one has been sentenced to death in Thailand, and no one has ever been sentenced to death for corruption or bribery. According to the prosecutors the death penalty is supposed to induce people to confess, because once they confess the penalty is usually reduced by half. So, if there is a death penalty, then the punishment is life imprisonment. If the maximum is life imprisonment and if they confess, the sentence is usually 25 years. And for good behavior there is a possibility that they could be out in five years or even less.

Thank you very much for the interview, Dr. Sirilaksana.



The interview was conducted by Shavaorn Wongcom (left), CPG program officer. Pictures by Maria Achrait



Comments collection:

Organic Act on Counter Corruption (No. 3)

B.E. 2558 (2015)

Comments on the Organic Act on Counter Corruption (No. 3) B.E. 2558 (2015)

On 10 July 2015 the Organic Act on Counter Corruption (No. 3) B.E. 2558 (2015), the latest amendment to the Organic Act on Anti-Corruption B.E. 2042 (1999), entered into force. CPG would like to thank those who submitted their comments on this Act presented below. (See also the interview with Dr. Sirilaksana Khoman above.)

Opinion of the National Anti-Corruption Commission (NACC) of Thailand on the Organic Act on Counter Corruption (No.3) B.E. 2558 (2015)

Upon ratification of the United Nations Convention against Corruption (UNCAC), Thailand is under an obligation to amend its anti-corruption legislation to ensure compliance with the Convention. The amendment of the Organic Act on Counter Corruption is therefore necessary for the country's legal system to be on par with international standards. This third amendment, the Organic Act on Counter Corruption (No.3), entered into force on the 10th of July, B.E. 2558 (2015) and contains the following significant issues:

1. Definitions for Foreign Public Official and Agent of a Public International Organisation

The definition of the terms “foreign public official” and “agent of a public international organization” has been added to Section 4. This addition authorises the NACC to inquire and decide whether any public official or agent of a public international organisation, be they Thai or of foreign nationality, commit an offence; and to inquire and decide on offences under the NACC's authority that have been committed outside the country.

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2. Statute of Limitations

Section 74/1 states that, in criminal prosecution, if the accused person or defendant has absconded during the prosecution or the consideration of the court, such period of abscondence would not be counted as part of the prescription period; and Section 98 of the Criminal Code would not apply in case where the defendant absconds after the final judgment has been made against him/her. It should be noted that this amendment is not an extension of the prescription period in corruption cases but rather a suspension in the event that the accused person or defendant has absconded. This section was amended in an attempt to cover all procedures of the criminal prosecution whether it is during the fact-inquiry process, the prosecution process, the court trial, or the post-judgment procedure.

3. Chapter VIII/I on Criminal Proceedings against Foreign Public Officials, Agents of Public International Organizations, and the Private Sector

Chapter VIII/I has been added to provide for the procedures on fact inquiring process where a foreign public official, an agent of a public international organization, or a person from the private sector has been accused of committing an offence under the Act. It further stipulates the legal liability or penalties besides the offences under the Criminal Code.

4. Liability of Juristic Persons for Bribery

Section 123/5 stipulates the liability of legal persons involved in the bribery of a public official. This section states that a juristic person will be liable if its representative or associated person bribes any public official in any position, be they local or foreign public officials, for corporate benefits, and the juristic person does not have adequate internal control measures to prevent the commission of such offence. In addition, the juristic person will be liable to a fine as it cannot be subjected to an imprisonment. The fine penalty is calculated from the damages occurred or the benefits gained so that the State would be compensated, to bring back undue benefits, and to create a deterrent effect to prevent and suppress such offences.

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7. Additional Powers and Duties of the NACC

Section 25 (3/1) stipulates that the NACC shall execute an agreement with the heads of organizations concerned in order to assign officials to provide assistance, support, or jointly perform duties as necessary, as a task force. Moreover, the NACC shall be eligible to proceed upon request for assistance from a foreign country in relation to a corruption case, according to Section 19 (14/I). Therefore, the additional powers and duties would help improve the effectiveness of the NACC in the fight against corruption in compliance with the UNCAC under which Thailand is a State Party. The Organic Act on Combating Corruption (No. 3) has been enacted in order to strengthen the effectiveness of the NACC in combating corruption in public and private sectors and to comply with the objectives of the Country Reform provided by the Constitution of the Kingdom of Thailand (Interim) B.E. 2557 (2014).



*Kitti Wasinondh, Member of
the National Legislative
Assembly of Thailand*

The Organic Act on Counter Corruption (No.3) B.E. 2558 (2015)

In my capacity as chair of the ad-hoc committee on anti-corruption legislative amendments, I and several key figures of the National Legislative Assembly deliberated on the proposed amendments by the NACC to the Organic Act on Counter Corruption in an effort to implement Thailand's obligations under the United Nations Convention against Corruption (UNCAC) and to improve the effectiveness of the anti-corruption law.

The Organic Act on Counter Corruption (No.3) B.E. 2558 (2015) entered into force on 10 July 2015 with the following provisions:

First, bribery of foreign public officials and officials of international organisations is criminalised. Sanctions and fines for domestic and foreign bribery are amended to ensure that they are effective, proportionate and dissuasive.

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Second, the court may prescribe forfeiture by value, apart from the existing property-based forfeiture. In case it appears that the property or benefit in a corruption case by its nature cannot or is unlikely to be recovered, the court can order the wrongdoer to make a payment at the market value. This provision aims to ensure an effective recovery mechanism when a misappropriated asset cannot be forfeited.

Third, the statute of limitation for a corruption case will be suspended in the event that the suspect has evaded the administration of justice. The provision is expected to prevent offenders from avoiding prosecution by evading the country and waiting for the statute of limitation to expire.

Forth, the liability of legal persons for bribery has been legalised. Bribes paid by an employee for corporate benefits will trigger liability of the corporation, if the juristic person does not have appropriate internal control measures to prevent the commission of such offence. Guidelines for legal persons' appropriate preventive measures will be prescribed by the NACC.

Fifth, to strengthen the NACC as the national competent anti-corruption authority, the law stipulates that the NACC shall have the competence to collaborate with relevant organisations, including entering into agreements for technical assistance and support and jointly performing duties as necessary.

There have recently been voices of concern about Section 123/3 of the amended Organic Act on Counter Corruption, which extends the penalty, including the maximum sentence of capital punishment for convicted foreign officials. Nonetheless, it is recognised that the death penalty is not unprecedented in the anti-corruption regime of Thailand. In fact, the provision follows the content of Section 149 of the Thai Penal Code, regarding the offence of bribery by Thai officials, which stipulates a range of sanctions, from imprisonment of five to twenty years, or life imprisonment, to the maximum of death penalty, as well as fines. Although the actual sentence is left to the discretion of the Court and the maximum penalty has never been applied to any case, the amendment has sent a clear signal to the public in general of Thailand's strong determination to combat bribery and other forms of corruption.

The Amendment of the Organic Act on Anti-Corruption (No. 3) B.E. 2558

On March 1, 2015, Thailand became a state party to the United Nations Convention against Corruption (UNCAC) which is an international treaty against corruption. It is a very comprehensive law and possesses international anti-corruption standards. The Convention entered into force on March 31, 2011 and, since becoming a state party, Thailand is obliged to comply with the Convention. Thailand has to amend or marked up the relevant laws for the implementation of the Convention and to be accepted by the international community with regard to its efforts in the field of anti-corruption measures.

Among others the Organic Law on Anti-Corruption (No.3) B.E. 2558 (“Organic Law”) has several important provisions. Regarding prescription in criminal processes, the Organic Law stipulates that when an accused person escapes during the trial or the investigation, the statute of limitation period will be suspended. If a verdict has been already rendered and the defendant escapes after having been found guilty by a definitive judgment, the provision of prescription can also not be applied. This provision is in accordance with the UNCAC which obliges the state parties to provide longer prescription periods or to interrupt prescription periods for cases in which the accused person escapes an ongoing process of justice administration. Therefore, if the state can bring the offender back to trial, the offender can be prosecuted without any lapse in the prescription period. This could solve the problem that offenders escape from trial until prescription has lapsed.

The Organic Law defines the terms of “official of a foreign state” and “official of an international organization” and determines the punishment for an official of a foreign state or an official of an international organization who demands a bribe. Thus, the state is able to prosecute the aforementioned officers who commit these offences. The state can also determine the punishment which is imprisonment for a term of five years to twenty years or life imprisonment, and to a fine of one hundred thousand Baht to four hundred thousand Baht.

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Lieutenant Colonel Korntip Daroj, Deputy Secretary-General, Office of Public Sector Anti-Corruption Commission



Sutasinee Charoensidhi, Investigator, Professional Level, Office of Public Sector Anti-Corruption Commission

The death penalty has already been prescribed for any “state officer who demands bribery” according to section 149 of the Penal Code. The Organic Law increases only the fine.

The amendment allows the state to punish a foreign state officer who could not be prosecuted by the old Organic Law. Moreover, the Organic Law specifies offences and punishments for juristic persons who get involved with bribery, whether with Thai or foreign officers, if such bribery is arranged for the benefit of the juristic person and the juristic person has no appropriate internal control measures to prevent the commission of such an offence. This additional offence is in accordance with the UNCAC as well.

Furthermore, the Organic Law amends the provisions on property confiscation. The property gained from the offences includes any property that is derived from the sale, distribution transfer or transformation of the property. Additionally, in the case that the recovery of such property is too difficult or if there is another appropriate ground to do so, the Court may prescribe the value of such property to be calculated as a money payment instead or the Court can confiscate another property which has the same value instead. The principle of this value based approach can prevent the disappearance of property which is derived from the offences.

It can be seen that corruption involving state officers may not only involve Thai state officers. Rather, it could also be foreign state officers who participate in the commission of the offences. Furthermore, private entities can also be a crucial part and a cause of corruption involving state officers. The prosecution of offenders should cover all people being part of the corruption circle. Therefore, the amendment of the Organic Law enhances Thailand’s anti-corruption legislation in order to have more efficient legal measures against corruption. The Organic Law complies with the Convention and reflects the international standard. This demonstrates how seriously the Government of the Kingdom of Thailand tackles corruption in Thai Society.



Dr. Warong Dechgitvigrom (M.D.),
former Member of Parliament for the
Democrat Party

Nowadays, corruption problems in Thai society are widespread and become more complicated, including their foreign links. Thailand ratified the United Nations Convention against Corruption in 2003 (UNCAC). However, Thailand did not implement its obligations in accordance with the convention by enacting particular corruption laws. This inaction could affect Thailand's reputation in counter corruption matters.

The amendment of the Organic Act on Counter Corruption No. 3 is carried out partly for the international implementation according to UNCAC. The important matters of this amendment are highlighted in many issues. The law applies to “Officers of a Foreign State” and “Officers of an International Organization”, specifies prescription in case the accused escapes and the point in time when prescription occurs, and introduces value-based forfeiture to corruption cases. The organic law caught public attention because it imposes the death penalty to bribery offences by state officers which is a very severe punishment. It could make participants in corruption circles scared, especially participants like politicians, state officers, private sectors or even foreign state officers, for instance in the G2G rice subsidy scheme. Therefore, the participants in corruption schemes would be more careful about the outcome. The state should publicize news about punishments more frequently. If there is no publication about these matters, people will not respect the law.

Even though the law increases the punishment to include the death penalty, the actual problem of Thai society is law enforcement, which is to arrest and prosecute perpetrators. This is because Thai society still has the patron–client system, and lobbying, even though the punishment is harsh. However severe the punishment is, if the law is enforced ineffectively and does not tackle preparatory bribes, corruption problems will not be reduced. The only solution is that the state needs to suppress corruption actively. Punishments need to show perpetrators that the government takes this problem seriously. It will make corruption suppression work.



Dr. Attisit Pankeaw,
Department of Political
Science, Thammasat
University

Organic Act on Counter Corruption B.E. 2558

The *raison d'être* of the revision of the Organic Act on Counter Corruption B.E. 2558 is to make the anti – corruption operations in Thailand consistent with the provisions laid down in the United Nations Convention against Corruption (UNCAC), as well as the international standard, of which the country became a party in March 1st, 2011.

The key issues in this revised act are, for instance, the introduction of provisions on the crime of bribery committed by officials of foreign states and those from international organizations, the stipulation of the limitations for escaping prosecutions and legal punishments, and the prescription of value-based confiscation for those committing corruption. The revision also falls in line with the spirit of the reform of the country according to the Constitution of the Kingdom of Thailand (Interim), Buddhist Era 2557 (2014). Above all, the most discussed and the central issue in the act is the article 123/2 that prescribes death penalty as the severest punishment for those committing corruption.

On the one hand, the death penalty prescribed in the article reflects the critical importance the legislature attaches to combating the deep-rooted corruption that has impeded the development of the country, and may have caused the country's political crisis during the last decade.

On the other hand, the prescription of death penalty has stirred concerns in many social sectors. The main concern is that the scale of punishment is considered disproportionate according to international human rights principles, by which many countries abide. The prescription of this punishment undermines Thailand in terms of human rights protection. Apart from that concern, there are the following misgivings:

(to be continued on next page)

(1) It will solve only the outcome of the problem, not the problem itself. Hence, it does not really curtail corruption.

(2) The definition and the scope of corruption is still vague and this will lump all government's policies together as corruption.

(3) Bureaucratic red tape concerning official fiscal and financial managements may cause misunderstandings. Thus unintended and small mistakes may be mistaken for corruption.

(4) Since there is no guarantee for judicial infallibility, especially concerning the investigative and judicial processes, there is room for miscarriages of justice.

There is a common thread through all the above mentioned concerns, namely the balance between the means (death penalty) and the end (curb on corruption). The prescription of death penalty for corruption, on the one hand, may increase the number of death row inmates who may incur this severe punishment just for trivial crimes. On the other hand, it may paralyze the policy-planning of the politicians and the policy-implementation of the civil servants, for fear of accidentally committing corruption and incurring death penalty.

In conclusion, the prescription of death penalty tends to cause long-term problems for Thai society, concerning human rights violations, political paralysis, retardation and logjams in policy-planning and administrative processes. Instead, the government should develop systems and mechanisms in politics and civil society to prevent corruption, especially by promoting anti-corruption consciousness and culture to combat corruption at its root.

A scenic view of a rocky coastline. The foreground shows rugged, light-colored rocks with some green algae. The water is clear and turquoise, with gentle waves lapping against the shore. The background shows a vast expanse of deep blue water under a bright blue sky.

Announcements

Events

On **17 September 2015** the Department of Special Investigation (DSI), a long-term partner of CPG, hosted the international workshop on ***“Enhancing Cooperation Among International Law Enforcement Agencies and the DSI”*** at Millennium Hilton Hotel Bangkok. The event was arranged for members of the Forum Anti-Narcotics and Crime (FANC), led by FANC Chairman *Richard Dupas*, Canadian Royal Mounted Police, and participated by officers and representatives of law enforcement agencies of countries all over the world. Opened by DSI Director General *Suwana Suwanjuta* and attended by nearly 100 participants, the event provided a high profile platform to discuss along the example of transnational human trafficking and smuggling enhanced possibilities of deepening the cooperation between international law enforcement agencies and the DSI. Besides Thai experts from the DSI and the Royal Thai Police, representatives of Australian, Canadian, South-African and US-American law enforcement agencies have been among the speakers at this event.

On **16 October 2015** *Wolfgang Sommer*, President of the Bavarian Riot Police, and Police Director *Gerd Enkling*, Head of the Education and Training Section of the Bavarian Riot Police, met with CPG Director *Henning Glaser* and *Karl-Peter Schönfisch*, country representative of the Hanns Seidel Foundation (HSF) for Thailand and Laos, to discuss possibilities of future cooperation. The meeting was presided by Pol. Gen. *Worapong Chewpreecha*, until recently Deputy Police Commissioner of the Royal Thai Police. It completed a week long program for police agencies in Indonesia and Thailand organized by HSF. During their stay President Sommer and Police Director Enkling gave various lectures and advice on concepts and practices of the education and recruitment of police officers in Bavaria which were delivered at various police locations in Indonesia (Headquarter of the Indonesian National Police, Police Academy Semarang AKPOL, State Police School LIDO), and Thailand (Headquarter of the Royal Thai Police, Royal Thai Police Cadet Academy). The program represents the most recent event in the long and

well established support of international police cooperation in Southeast Asia organized by the Hanns Seidel Foundation (HSF) under the guidance of *Hanns Bühler*, Head of the South and Southeast Asia Division of HSF.

On **30 October 2010** the University of Passau and its Faculty of Business Administration and Economics and Faculty of Arts and Humanities jointly organized the Symposium ***“Institutions and Sustainable Development Through an Inter-disciplinary Lens”*** at the IT Centre of the University. The event was held to mark the start of the new Master’s programme in Development Studies. Please find more information on the study programme at <http://www.uni-passau.de/en/ma-devstudies/>.

On **18 November 2015** the Faculty of Law of Thammasat University will arrange a special lecture. Prof. *Peter Duff* from the Law School of Aberdeen University will speak on the topic of ***“Prosecution Systems in a Comparative Context”***. Please find more information at <http://www.law.tu.ac.th/profduff>.

On **19 November 2015** the DAAD Information Center Bangkok will

hold the next of the monthly held information events on ***“Study and Research in Germany”*** (in Thai) at the auditorium of the Thai-German Cultural Foundation. Following the presentations by one of the DAAD IC Study Counselors time will be given to ask questions. The admission is free. For more information, please follow the link <http://www.daad.or.th/en/>.

On **23-24 November** the Global Science and Technology Forum will host the the 2nd Annual International Conference on ***“Regional Studies: Asian, American, African and European”*** at Hotel Fort Canning in Singapore. See more at: <http://aaae-conf.org/index.html#sthash.7xYdsYuE.dpuf>.

On **24-25 November 2015** the Thailand Office of Konrad-Adenauer-Stiftung will arrange the international conference ***“Ethics, Happiness and Sustainable Development”*** at Mahidol University, Nakhonpathom. Information on the event are provided at <http://www.kas.de/thailand/en/events/65797/>.

On **25-27 November 2015** the Regional Studies Association in host the international conference

“Harmonious Development, Common Prosperity and the Transformation of Cities and Regions” at Zhejiang University. Please find more details at <http://www.regionalstudies.org/conferences/conference/rsa-china-2015>.

On **28 November 2015** the Faculty of Law, Thammasat University, will host guest lectures on the topic of ***“The International Court of Justice and the Maintenance of International Peace and Security”*** to be given by Hon. Hisahi Owada, Judge and former President of the International Court of Justice, and Hon. Xue Hanqin, Judge of the International Court of Justice. For more details, please see <http://www.law.tu.ac.th/en/most-highly-qualified-publicists%E2%80%9999-lecture-the-international-court-of-justice-and-the-maintenance-of-international-peace-and-security>.

On **2 December 2015** Frankfurt University will host a guest lecture on the topic of ***“Reclaiming Public Ownership: Making Space for Economic Democracy”*** to be given by Prof. Andrew Cumbers, Adam Smith Business School, University of Glasgow. Please find more information at [https://qis.server.uni-](https://qis.server.uni-frankfurt.de/qisserver/rds?state=verpublish&publishContainer=lectureContainer&publishid=183154)

[frankfurt.de/qisserver/rds?state=verpublish&publishContainer=lectureContainer&publishid=183154](https://qis.server.uni-frankfurt.de/qisserver/rds?state=verpublish&publishContainer=lectureContainer&publishid=183154).

On **3 December 2015** Frankfurt University will the public discussion forum ***“Recht wider Humanität in der Asyl- und Flüchtlingspolitik?”*** on the occasion of the “Frankfurter Tag der Rechtspolitik 2015”. For further details, please see <http://www.jura.uni-frankfurt.de/58288992/repo15a41.pdf>.

On **5-7 December 2015** International Experts for Research Enrichment and Knowledge Exchange (IEREK) will host the international conference ***“Improving Sustainability Concept in Developing Countries”*** at Grand Nile Tower, Cairo. Details are available at <https://www.ierek.com/events/improving-sustainability-concept-developing-countries/>.

On **15-16 December 2015** the International Institute of Knowledge Management will host the 2nd Annual International Conference on ***“Poverty and Sustainable Development”*** in Colombo, Sri Lanka. Further information are provide at <http://povertyconferences.com/2015/>.

On **17 December 2015** the Faculty of Business Administration and Economics of Passau University will host a guest lecture on the topic *“Nachhaltigkeit als Unternehmensherausforderung und Chance: Gekommen um zu bleiben”*. Speaker will be Prof. Dr. Markus Beckmann, Chair for Corporate Sustainability Management at the University Erlangen-Nuremberg. For more information, please see [http://www.uni-passau.de/universitaet/universitaet-im-ueberblick/neues-vom-campus/veranstaltungs-kalender/termin/2015/dezember/17/nachhaltigkeit-als-unternehmensherausforderung-und-chance-gekommen-um-zu-bleiben/?tx_cal_controller\[view\]=event&tx_cal_controller\[type\]=tx_cal_phpicalendar&cHash=da89ceaecace53984eb571e7273129c7](http://www.uni-passau.de/universitaet/universitaet-im-ueberblick/neues-vom-campus/veranstaltungs-kalender/termin/2015/dezember/17/nachhaltigkeit-als-unternehmensherausforderung-und-chance-gekommen-um-zu-bleiben/?tx_cal_controller[view]=event&tx_cal_controller[type]=tx_cal_phpicalendar&cHash=da89ceaecace53984eb571e7273129c7).

People

Thitiwoot Techapun, CPG Spring School- and German language class alumnus, has recently passed the examination to enter the Foreign Service of Thailand. Congratulations, Thitiwoot! CPG wishes success for your career in the Foreign Service.



Apapan Seeherunwong, former CPG Spring School Scholarship holder and CPG student assistant, completed her Master of Law in Intellectual Property with distinction at Queen Mary University of London. She is now planning to pursue her PhD at Max Planck Institute in Munich. Congratulations, Apapan, and best wishes for your future education!

CPG Job-Market



As a service, CPG provides a regularly updated overview of currently open job offers in fields and from institutions related to CPG's focal areas of work

Organization	Vacant position	Department, Office, Location	Closing Date	Information available at:
German-Southeast Asian Center of Excellence for Public Policy and Good Government (CPG)	Program Coordinator (full time) starting from January 2016	Faculty of Law, Thammasat University, Bangkok	30 November 2015	www.cpg-online.de
Economic and Social Commission for Asia and the Pacific	Chief, Countries with Special Needs Section	ESCAP Bangkok, Thailand	28 December 2015	http://unjobs.org/vacancies/1446150328383
Economic and Social Commission for Asia and the Pacific	Senior Staff Assistant	ESCAP Bangkok, Thailand	28 November 2015	http://unjobs.org/vacancies/1446117356025
Economic and Social Commission for Asia and the Pacific	Intern – Economic Affairs	ESCAP Bangkok, Thailand	31 December 2015	http://unjobs.org/vacancies/1426694240668
Economic and Social Commission for Asia and the Pacific	Intern – Social Sciences	ESCAP Bangkok, Thailand	31 December 2015	http://unjobs.org/vacancies/1422313341771
Economic and Social Commission for Asia and the Pacific	Intern – Political Affairs	ESCAP Bangkok, Thailand	31 December 2015	http://unjobs.org/vacancies/1421282314007
Economic and Social Commission for Asia and the Pacific	Intern – Programme Management	ESCAP Bangkok, Thailand	31 December 2015	http://unjobs.org/vacancies/1421188857792
Economic and Social Commission for Asia and the Pacific	Intern – Statistical Information Systems	ESCAP Bangkok, Thailand	31 December 2015	http://unjobs.org/vacancies/1421188778609

Pacific				
Economic and Social Commission for Asia and the Pacific	Intern – Public Information	ESCAP Bangkok, Thailand	31 December 2015	http://unjobs.org/vacancies/1421102014590
Economic and Social Commission for Asia and the Pacific	Administrative Assistant	ESCAP Bangkok, Thailand	27 November 2015	http://unjobs.org/vacancies/1446051357809
FHI 360, non-profit human development organization	Monitoring and Evaluation Officer	FHI 360 Bangkok, Thailand	Not specified	http://unjobs.org/vacancies/1435940743403
FHI 360, non-profit human development organization	Project Director/Chief of Party	FHI 360 Bangkok, Thailand	Not specified	http://unjobs.org/vacancies/1435813062808
FHI 360, non-profit human development organization	Senior Program Officer	FHI 360 Bangkok, Thailand	Not specified	http://unjobs.org/vacancies/1435653458969
FHI 360, non-profit human development organization	Human Resources Coordinator	FHI 360 Bangkok, Thailand	Not specified	http://unjobs.org/vacancies/1435080586746
FHI 360, non-profit human development organization	Technical/Program Officer	FHI 360 Bangkok, Thailand	Not specified	http://unjobs.org/vacancies/1419894228741
Goethe Institute	Honorarlehre-kraft Deutsch als Fremdsprache	Goethe-Institute Thailand, Bangkok, Thailand	22 November 2015	http://www.kimeta.de/OfferDetail.aspx?oid=372666009591891&r=10
Institute for Sustainable Communities	Asia Regional Director	Bangkok, Thailand	Not specified	http://unjobs.org/vacancies/1425769875359
International Rescue Committee	Casework Coordinator	IRC Resettlement Support Center, Bangkok, Thailand	Not specified	http://unjobs.org/vacancies/1436548767798
Management Systems International (MSI)	IQC Manager/Chief of Party	Support Services for Local Solutions IQC, Bangkok,	Not specified	http://unjobs.org/vacancies/1411598352524

		Thailand		
Office of the High Commissioner for Human Rights	Intern – Human Rights	OHCHR Thailand, Bangkok, Thailand	31 December 2015	http://unjobs.org/vacancies/1424988039306
Social Impact, Inc. – International Development Consulting firm	Senior Team Leader (Democracy)	RDMA Frontiers Learning Series, Bangkok, Thailand	For two events in 2016	http://unjobs.org/vacancies/1437900318006
Social Impact, Inc. – International Development Consulting firm	Senior Team Leader (Economic)	RDMA Frontiers Learning Series, Bangkok, Thailand	For two events in 2016	http://unjobs.org/vacancies/1437900317527
Social Impact, Inc. – International Development Consulting firm	Regional Program Assistant – USAID/RDMA Monitoring	Bangkok, Thailand	Not specified	http://unjobs.org/vacancies/1437641113716
United Nations	Intern – Database Development	Department of Safety and Security, Bangkok, Thailand	31 December 2015	http://unjobs.org/vacancies/1422219027786
United Nations Environment Programme	Programme Officer	UNEP Bangkok, Thailand	22 November 2015	http://unjobs.org/vacancies/1445893898339
United Nations Office for Disaster Risk Reduction	Intern – Programme Management	United Nations International Strategy for Disaster Reduction, Bangkok, Thailand	31 December 2015	http://unjobs.org/vacancies/1437036688079
World Vegetable Center, non-profit international agricultural research center	Regional Director	AVRDC regional office Bangkok, Thailand	Not specified	http://unjobs.org/vacancies/1401387677808
World Vegetable Center, non-profit international agricultural research center	Scientific Coordinator	AVRDC regional office Bangkok, Thailand	Not specified	http://unjobs.org/vacancies/1401387670783

Impressum

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